



HOUSE OF REPRESENTATIVES FEDERAL REPUBLIC OF NIGERIA VOTES AND PROCEEDINGS

Wednesday, 16 November, 2016

1. The House met at 11.24 a.m. Mr Deputy Speaker read the Prayers.

2. **Votes and Proceedings**

Mr Deputy Speaker announced that he had examined and approved the *Votes and Proceedings* of Tuesday, 15 November, 2016.

The Votes and Proceedings was adopted by unanimous consent.

3. **Announcements**

(a) **Visitors in the Gallery:**

Mr Deputy Speaker recognized the presence of the following visitors:

- (i) Staff and Pupils of *Noble Guide Academy*, Kubwa, Abuja;
- (ii) Staff and Students of *Abuja International Academy*, Mararaba, Karu, Nasarawa State; and
- (iii) Staff and Students of *Valid Crown International College*, Bwari, Abuja.

(b) **Conference Committees:**

Mr Deputy Speaker announced members of Conference Committees on:

(i) **Agricultural Credit Guarantee Scheme Fund Act (Amendment), Bill, 2016:**

(1)	Hon. Mohammed Tahir Monguno	—	Chairman
(2)	Hon. Owoidighe Ekpoattai	—	Member
(3)	Hon. Darlington Nwokocha	—	Member
(4)	Hon. Muktari Chiromawa	—	Member
(5)	Hon. Amuda Kannike Abubakar	—	Member
(6)	Hon. Adebutu Oladipupo	—	Member

(ii) **Petroleum Product Pricing Regulatory Agency Act (Amendment) Bill, 2016:**

(1)	Hon. Akinlaja Iranola Joseph	—	Chairman
(2)	Hon. Aminu Shehu Shagari	—	Member
(3)	Hon. Danladi Baido	—	Member
(4)	Hon. Dickson Dominic	—	Member
(5)	Hon. Jones Onyereri	—	Member

(6)	Hon. Omoses Gabriella	—	Member
(7)	Hon. James Faleke	—	Member
(iii) Bankruptcy and Insolvency Bill, 2016:			
(1)	Hon. Jones Chukwudi Onyereri	—	Chairman
(2)	Hon. Salisu Zakari Ningi	—	Member
(3)	Hon. Abubakar Lawal Garba	—	Member
(4)	Hon. Mohammed Nur Sheriff	—	Member
(5)	Hon. Shehu Garba Nicholas	—	Member
(6)	Hon. Olabode Ayorinde	—	Member
(iv) Defence Space Administration Bill, 2016:			
(1)	Hon. Ibrahim Sadiq	—	Chairman
(2)	Hon. Kayode Oladele	—	Member
(3)	Hon. Kabiru Shuaibu	—	Member
(4)	Hon. Agbo Dennis Nnamdi	—	Member
(5)	Hon. Lovette Idisi Ederin	—	Member
(6)	Hon. Mark Terseer Gbillah	—	Member

4. Petitions

(i) Petitions from the following persons were presented and laid by Hon. Abiodun Olasupo (*Iseyin/Itesiwaju/Kajola/Iwajowa Federal Constituency*):

- (a) Okoro Felicia on her dismissal from the service of the Federal Road Safety Commission (FRSC);
- (b) Bulus Daniel and 4 others on the refusal of the Central Bank of Nigeria (CBN) to comply with House resolution of Wednesday, 22 October, 2014 regarding the non-payment of their terminal benefits;
- (c) C. U. Okoi & Associates (Legal Practitioners) on behalf of Association of Private Operators of Sea Port Terminals, Calabar Port, Cross River State and 1 other, on the non-payment of their salaries and entitlements by K-Marine Limited;
- (d) Human Rights League of Nigeria, on behalf of the family of Late Nnanna Igwe on trespass and conversion of their land at Victoria Garden City, Lagos, by the Management of Garden City Estate Property Company;
- (e) Najco Laboratories Limited, on the non-payment of an outstanding sum of ₦14,560,137.00 (Fourteen million, five hundred and sixty thousand, one hundred and thirty-seven Naira) only, due to the Company, by Nigerian Agip Oil Company;
- (f) Senior Staff Association of Nigerian Universities (SSANU), Federal University of Agriculture, Abeokuta Branch, on victimization and persecution of its members by the Pro-Chancellor and Vice-Chancellor of the university;

(ii) Petitions from the following persons were presented and laid by Hon. Hassan Saleh (*Ado/Ogbadibo/Okpokwu Federal Constituency*):

- (a) Chief Godwin Ekwelem Uti, and 6 others, on behalf of Umusam community, Utagba-Ogbe Kingdom, Kwale, on the need to compel Nigeria Agip Oil Company (NAOC), to pay all their accruable benefits to the rightful head of the community;

- (b) Covenant Maritime & Agro-Allied Industries Limited, on the environmental pollution of Owaza community, Rivers State, arising from oil exploration activities by Shell Petroleum Development Company (SPDC);
- (c) Nnamani Anthony O. and 19 others, on the stoppage of their salaries, by the Federal Civil Service Commission;
- (d) Ogulagha community in Burutu Local Government Area, Delta State, on the non-payment of all Rentals due to them by Shell Petroleum Development Company (SPDC);
- (e) His Royal Highness, Eze A. N. Osoh, JP, Eze Ali Usomini II of Ogbaland, Rivers State, seeking the leave of the House to withdraw his petition against Nigeria Agip Oil Company (NAOC) pending before the House;
- (iii) A petition from Johnson Emmanuel Kolawole, on his interdiction by the office of the Accountant-General of the Federation, was presented and laid by Hon. Mukaila Olayiwola Kazzim (*Abeokuta North/Obafemi-Owode/Odeda Federal Constituency*);
- (iv) A petition from Ex-PC Ken Ayapaye, on his dismissal from the service of the Nigeria Police, was presented and laid by Hon. Julius G. Pondi (*Burutu Federal Constituency*);
- (v) A petition from B. O. Osinubi (Ifara Chambers), on behalf of Ogun Waterside Development Association and 2 others, on non-compliance with the Share Purchase Agreement and failure to revive and effectively operationalise the Iwopin Pulp and Paper Company, Iwopin, Ogun State, by the Bureau of Public Enterprises and Beulah Technical Service Company Limited, was presented and laid by Hon. Adesegun Abdel-Majid Adekoya (*Ijebu North/Ijebu East/Ogun Waterside Federal Constituency*).

Petitions referred to the Committee on Public Petitions.

5. Matters of Urgent Public Importance (Standing Order Eight, Rule 4)

- (i) *Need for Immediate Clean-up of the Oil Spillage at Otuokpoti and Agbura Axis of Bayelsa State:*
Hon. Sodaguwu A. Festus-Omoni (*Ogbia Federal Constituency*) introduced the matter and prayed the House to:

- (a) consider and approve the matter as one of urgent public importance; and
- (b) suspend Order Eight, Rule 4 (3) to allow debate on the matter forthwith.

Question that the matter be considered as one of urgent public importance — Agreed to.

Question that the House do suspend Order Eight, Rule 4 (3) to enable it debate the matter forthwith — Agreed to.

Need for Immediate Clean-up of the Oil Spillage at Otuokpoti and Agbura Axis of Bayelsa State:

The House:

Notes that on 27 October, 2016, there was a devastating oil spillage at the Otuokpoti and Agbura axis of the Ekoli Creek in Bayelsa State;

Worried that this preventable spillage was due to a rusty and corroded underwater oil pipeline of over forty five (45) years old, which life-span has lapsed and was continuously being used negligently by Shell Petroleum Company Limited in its daily operations; a practice which is quite contrary to international best practices;

Concerned that this oil spillage has adversely affected all the eighteen (18) villages along the Ekoli creek especially during the peak of the recent flood season;

Also worried that this spillage has abruptly and adversely affected the means of livelihood of people living along and beyond the Ekoli creek, which is a major source of drinking water to inhabitants of the affected areas, majority of who are into fish and crops farming, and that this spillage has wrecked untold havoc on both aquatic life espec'ally fishing gears and other fishing implements, cash crops and legitimate means of sustenance;

Also concerned that going by expert opinion and advise, if immediate steps are not taken, there is the likelihood of outbreak of epidemic as it was rightly observed that some ignorant persons, children inclusive, are scooping the crude oil oblivious of its adverse health hazards;

Aware that "the security and welfare of the people shall be the primary purpose of government" as enshrined in section 14 (2) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended);

Resolves to:

- (i) urge Shell Petroleum Company Limited to commence immediate clean-up of the affected areas;
- (ii) also urge National Oil Spill Detection Response Agency (NOSDRA) to conduct and submit a baseline study of the project hat led to this unwholesome disaster;
- (iii) further urge Shell Petroleum Company Limited to immediately commence community intervention projects such as provision of pipe borne water and other relief materials in the affected communities;
- (iv) equally urge the National Emergency Management Agency (NEMA) and other concerned agencies to supply relief materials such as drugs, food, clothing etc. to the inhabitants of the affected areas; and
- (v) mandate the Committees on Petroleum Resources (Upstream), Petroleum Resources (Downstream), Gas Resources, Environment and Habitat, Disaster and Emergency Preparedness, and Legislative Compliance to take all necessary measures in addressing this urgent matter and report back to the House within two (2) weeks for further Legislative action (*Hon. Sodagwu A. Festus-Ononi — Ogbia Federal Constituency*).

Debate.

Agreed to.

The House:

Noted that on 27 October, 2016, there was a devastating oil spillage at the Otuekpoti and Agbura axis of the Ekoli Creek in Bayelsa State;

Worried that this preventable spillage was due to a rusty and corroded underwater oil pipeline of over forty five (45) years old, which life-span has lapsed and was continuously being used negligently by Shell Petroleum Company Limited in its daily operations; a practice which is quite contrary to international best practices;

Concerned that this oil spillage has adversely affected all the eighteen (18) villages along the Ekoli creek especially during the peak of the recent flood season;

Also worried that this spillage has abruptly and adversely affected the means of livelihood of people living along and beyond the Ekoli creek, which is a major source of drinking water to inhabitants of the affected areas, majority of who are into fish and crops farming, and that this spillage has wrecked untold havoc on both aquatic life especially fishing gears and other fishing implements, cash crops and legitimate means of sustenance;

Also concerned that going by expert opinion and advise, if immediate steps are not taken, there is the likelihood of outbreak of epidemic as it was rightly observed that some ignorant persons, children inclusive, are scooping the crude oil oblivious of its adverse health hazards;

Aware that "the security and welfare of the people shall be the primary purpose of government" as enshrined in section 14 (2) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended);

Resolved to:

- (i) urge Shell Petroleum Company Limited to commence immediate clean-up of the affected areas;
 - (ii) also urge National Oil Spill Detection Response Agency (NOSDRA) to conduct and submit a baseline study of the project that led to this unwholesome disaster;
 - (iii) further urge Shell Petroleum Company Limited to immediately commence community intervention projects such as provision of pipe borne water and other relief materials in the affected communities;
 - (iv) equally urge the National Emergency Management Agency (NEMA) and other concerned agencies to supply relief materials such as drugs, food, clothing etc. to the inhabitants of the affected areas; and
 - (v) mandate the Committees on Petroleum Resources (Upstream), Petroleum Resources (Downstream), Gas Resources, Environment and Habitat, Disaster and Emergency Preparedness, and Legislative Compliance to take all necessary measures in addressing this urgent matter and report back to the House within two (2) weeks for further Legislative action (**HR. 190/2016**).
- (ii) *Need to Curb a Developing Trend where the Director-General, Budget Office of the Federation, now Directs Chief Executives of Agencies of Government to Remit to the Treasury Capital Funds Already Released to them:*
Hon. Agbedi Yeitiemone Frederick (Ekeremor/Sagbama Federal Constituency) introduced the matter and prayed the House to:
- (a) consider and approve the matter as one of urgent public importance; and
 - (b) suspend Order Eight, Rule 4 (3) to allow debate on the matter forthwith.

Question that the matter be considered as one of urgent public importance — Agreed to.

Question that the House do suspend Order Eight, Rule 4 (3) to enable it debate the matter forthwith — Agreed to.

Need to Curb a Developing Trend where the Director-General, Budget Office of the Federation, now Directs Chief Executives of Agencies of Government to Remit to the Treasury Capital Funds Already Released to them:

The House:

Notes that there is a worrisome developing trend where the Director-General, Budget office of the Federation directed the Chief Executives of FERMA to remit to Treasury Capital Funds already released to them for execution of capital projects;

Aware that the Director-General of the Budget office of the Federation has directed the Managing Director of FERMA to remit to the Treasury eight billion Naira (₦8,000,000,000) out of ten billion, three hundred million Naira (₦10,300,000,000) already released to the Agency vide warrant No. W01/00006938 for the execution of capital projects, leaving it with only two billion, three hundred million Naira (₦2,300,000,000);

Also aware that due to the compelling need for FERMA to repair and maintain dilapidated roads across the nation, the National Assembly graciously approved a total of ₦21,816,546,653 out of which, only ₦10,399,549,201 was recently released this October to the Agency for execution of some critical capital projects; which includes so many failed and bad roads across the country;

Concerned that FERMA has already prioritized its Capital projects while it has advertised in line with the Procurement Act, 2007, and that contractors desirous to work for the Agency have spent hard earned monies to buy Tender documents, which they are now bound to lose by the directive from Director-General, Budget office of the Federation;

Cognizant that the funds already released to FERMA were part of the funds already appropriated for FERMA in the Appropriation Act of 2016, passed by parliament, which is already a law, and that any amendment to this law can only be carried out by the National Assembly;

Convinced that the directive from the Director-General Budget office of the Federation cannot be said to be virement as virement can only be appropriately approved by the National Assembly, which has not done so in this case;

Worried that if the action of the Director-General, Budget office of the Federation is not curbed and nipped in the bud, the planned execution of Capital projects by FERMA and Agencies of Government will be crippled;

Resolves to:

Set up an *Ad-hoc* Committee to investigate the Directive of the Director-General, Budget Office of the Federation to the Managing Director of FERMA, and report back to the House within one (1) week for further legislative action (*Hon. Agbedi Yeitiemone Frederick — Sagbama/Ekeremor Federal Constituency*).

Debate.

Agreed to.

The House:

Noted that there is a worrisome developing trend where the Director-General, Budget office of the Federation directed the Chief Executives of FERMA to remit to Treasury Capital Funds already released to them for execution of capital projects;

Aware that the Director-General of the Budget office of the Federation has directed the Managing Director of FERMA to remit to the Treasury eight billion Naira (₦8,000,000,000) out of ten billion, three hundred million Naira (₦10,300,000,000) already released to the Agency vide warrant No. W01/00006938 for the execution of capital projects, leaving it with only two billion, three hundred million Naira (₦2,300,000,000);

Also aware that due to the compelling need for FERMA to repair and maintain dilapidated roads across the nation, the National Assembly graciously approved a total of ₦21,816,546,653 out of which, only ₦10,399,549,201 was recently released this October to the Agency for execution of some critical capital projects; which includes so many failed and bad roads across the country;

Concerned that FERMA has already prioritized its Capital projects while it has advertised in line with the Procurement Act, 2007, and that contractors desirous to work for the Agency have spent hard earned monies to buy Tender documents, which they are now bound to lose by the directive from Director-General, Budget office of the Federation;

Cognizant that the funds already released to FERMA were part of the funds already appropriated for FERMA in the Appropriation Act of 2016, passed by parliament, which is already a law, and that any amendment to this law can only be carried out by the National Assembly;

Convinced that the directive from the Director-General Budget office of the Federation cannot be said to be virement as virement can only be appropriately approved by the National Assembly, which has not done so in this case;

Worried that if the action of the Director-General, Budget office of the Federation is not curbed and nipped in the bud, the planned execution of Capital projects by FERMA and Agencies of Government will be crippled;

Resolved to:

Set up an *Ad-hoc* Committee to investigate the Directive of the Director-General, Budget Office of the Federation to the Managing Director of FERMA, and report back to the House within one (1) week for further legislative action (**HR. 191/2016**).

6. Presentation and First Reading of Bills

The following Bills were read the *First Time*:

- (1) Federal Character Commission Act (Amendment) Bill, 2016 (HB. 832).
- (2) Constitution of the Federal Republic of Nigeria, 1999 (Alteration) Bill, 2016 (HB. 833).
- (3) Constitution of the Federal Republic of Nigeria, 1999 (Alteration) Bill, 2016 (HB. 834).
- (4) Energy Commission of Nigeria Act (Amendment) Bill, 2016 (HB. 835).
- (5) Veterinary Surgeons Bill, 2016 ((HB. 836).
- (6) National Agency for Albinism and Hypo-Pigmentation (Establishment) Bill, 2016 (HB. 837).

- (7) Nigerian Institute of Agriculturists Bill, 2016 (HB. 838).
- (8) Agricultural Research Council of Nigeria Bill, 2016 (HB. 839).
- (9) National Information Technology Development Agency Act (Amendment) Bill, 2016 (HB. 840).
- (10) National Health Act (Amendment) Bill, 2016 (HB. 841).
- (11) Nigerian Intelligence Agency (NIA) Pensions Bill, 2016 (HB. 842).
- (12) Sexual Harassment in Educational Institutions Bill, 2016 (HB. 843).

7. **Presentation of Reports**

(i) **Committee on Tertiary Education and Services:**

Motion made and Question proposed, "That the House do receive the Report of the Committee on Tertiary Education and Services to Call on the Federal Government to Review the Downgrade of Four Federal Universities of Education (HR. 149/2015)" (Hon. Aminu Suleiman — Fagge Federal Constituency).

Agreed to.

Report laid.

(ii) **Committee on Public Petitions:**

Report on the Petition by Okere Ethelbert:

Motion made and Question proposed, "That the House do receive the Report of the Committee on Public Petitions on the Petition by Okere Ethelbert against the Nigeria Prisons Service on Alleged Lopsidedness and Marginalisation in Promotion Exercise" (Hon. Uzoma Nkem-Abonta — Ukwu East/Ukwu West Federal Constituency).

Agreed to.

Report laid.

(iii) **Committee on Public Petitions:**

Report on the Petition by Mahmood A. Jafiya:

Motion made and Question proposed, "That the House do receive the Report of the Committee on Public Petitions on the Petition by Mahmood A. Jafiya against the Federal Housing Authority on Alleged Wrongful Dismissal from Service" (Hon. Uzoma Nkem-Abonta — Ukwu East/Ukwu West Federal Constituency).

Agreed to.

Report laid.

(iv) **Committee on Public Petitions:**

Report on the Petition by Mr M. A. Adeyinka:

Motion made and Question proposed, "That the House do receive the Report of the Committee on Public Petitions on the Petition by Mr M. A. Adeyinka on Alleged Contravention of the 8 Year Tenure for Permanent Secretaries, Directors-General and Directors, and Falsification of State Records in the National Oil Spill Detection and Response Agency (NOSDRA), and Abuse of Disciplinary Procedure in the Public Service by the Panel of Investigation" (Hon. Uzoma Nkem-Abonta — Ukwu East/Ukwu West Federal Constituency).

Agreed to.

Report laid.

(v) **Committee on Public Petitions:**

Report on the Petition by Simeon A. Ajisafe:

Motion made and Question proposed, "That the House do receive the Report of the Committee on Public Petitions on the Petition by Simeon A. Ajisafe against the Nigeria Police Force on Alleged Unlawful Dismissal and Travesty" (Hon. Uzoma Nkem-Abonta — Ukwa East/Ukwa West Federal Constituency).

Agreed to.

Report laid.

8. A Bill for an Act to Amend the Pharmacists Council of Nigeria Act, Cap. P17, Laws of the Federation of Nigeria, 2004, to Streamline the Number of Pharmacy Schools on the Council, Ascertain Certainty of False Statements and Review Fines Upwards, and a Bill for an Act to Repeal the Pharmacists Council of Nigeria Act, Cap. P17, Laws of the Federation of Nigeria, 2004, and Re-enact the Pharmacists Council of Nigeria Act to Regulate the Training and Practice of Pharmacy and for Other Related Matters (HB. 364 and HB. 656) — *Second Reading*
Motion made and Question proposed, "That a Bill for an Act to Amend the Pharmacists Council of Nigeria Act, Cap. P17, Laws of the Federation of Nigeria, 2004, to Streamline the Number of Pharmacy Schools on the Council, Ascertain Certainty of False Statements and Review Fines Upwards, and a Bill for an Act to Repeal the Pharmacists Council of Nigeria Act, Cap. P17, Laws of the Federation of Nigeria, 2004, and Re-enact the Pharmacists Council of Nigeria Act to Regulate the Training and Practice of Pharmacy and for Other Related Matters (HB. 364 and HB. 656) be now read a Second Time" (Hon. Betty Apiafi — Ahoada East/Abua/Odual Federal Constituency and 1 other).

Debate.

Question that the Bill be read a Second Time — Agreed to.

Bill read the Second Time.

Bill referred to the Committee on Healthcare Institutions.

9. A Bill for an Act to Amend the Public Officers Protection Act, Cap. P41, Laws of the Federation of Nigeria, 2004, to Provide for Suspension from Office of Public Officers Facing Criminal Trials Thereby Stopping the Officers from Discharging any Functions, Collecting Salaries or Allowances Relating to the Offices Occupied During the Period of the Trial, a Bill for an Act to Amend the Public Officers Protection Act, Cap. P41, Laws of the Federation of Nigeria, 2004, to Expressly Extend the Limitation Period from Three Months to Twelve Months, and a Bill for an Act to Repeal the Public Officers Protection Act, Cap. P41, Laws of the Federation of Nigeria, 2004, and for Other Related Matters (HB. 54, HB. 157 and HB. 301) — *Second Reading*

Order read; deferred by leave of the House.

10. **A Bill for an Act to Amend the Official Secrets Act, Cap. O3, Laws of the Federation of Nigeria, 2004, to reflect the new Title of the Act, Include Other Security Agencies, Increase some Penalties and for Other Related Matters (IIB. 675) — Second Reading**
Motion made and Question proposed, "That a Bill for an Act to Amend the Official Secrets Act, Cap. O3, Laws of the Federation of Nigeria, 2004, to reflect the new Title of the Act, Include Other Security Agencies, Increase some Penalties and for Other Related Matters (IIB. 675) be now read a Second Time" (*Hon. Aminu Suleiman — Fagge Federal Constituency*).

Debate.

Question that the Bill be read a Second Time — Agreed to.

Bill read the Second Time.

Bill referred to the Committee on Justice.

11. **A Bill for an Act to Make Provisions for the Management of Mental Health in Nigeria and for Other Related Matters (IIB. 554) — Second Reading**

Order read; deferred by leave of the House.

12. **A Bill for an Act to Amend the Nigerian National Petroleum Corporation Act, Cap. N123, Laws of the Federation of Nigeria, 2004, to Enshrine Legislative Approval for Budgetary Expenditure and for Other Related Matters (IIB. 571) — Second Reading**

Order read; deferred by leave of the House.

13. **A Bill for an Act to Amend the Taxes and Levies (Approved List for Collection) Act, Cap. T2, Laws of the Federation of Nigeria, 2004, to bring the Act within the Contemplation of section 315 of the 1999 Constitution and for Other Related Matters (IIB. 438) — Second Reading**

Order read; deferred by leave of the House.

14. **A Bill for an Act to Alter the First Schedule to Section 3 of the Constitution of the Federal Republic of Nigeria, 1999, to Reflect the Proper Name of 'Atisbo' Local Government Area of Oyo State and for Other Related Matters (IIB. 716) — Second Reading**

Motion made and Question proposed, "That a Bill for an Act to Alter the First Schedule to Section 3 of the Constitution of the Federal Republic of Nigeria, 1999, to Reflect the Proper Name of 'Atisbo' Local Government Area of Oyo State and for Other Related Matters (IIB. 716) be now read a Second Time" (*Hon. Olatunbosun Olajide Boladele — Atisho/Saki East/Saki West Federal Constituency*).

Debate.

Question that the Bill be read a Second Time — Agreed to.

Bill read the Second Time.

Bill referred to the Special Ad-hoc Committee on the Review of the 1999 Constitution.

15. **A Bill for an Act to Provide for the Establishment of the National Gas Resources Development Agency and for Other Related Matters (IIB. 607) — Second Reading**
Motion made and Question proposed, "That a Bill for an Act to Provide for the Establishment of the National Gas Resources Development Agency and for Other Related Matters (IIB. 607) be now read a Second Time" (*Hon. Agbedi Yeitiemone Frederick — Ekeremor/Sagbama Federal Constituency*).

Debate.

Question that the Bill be read a Second Time — Agreed to.

Bill read the Second Time.

Bill referred to the Committee on Gas Resources.

16. Request for Virement of Funds Appropriated in the Appropriation Act, 2016
Motion made and Question proposed:

The House:

Notes that a Communication from the President of the Federal Republic of Nigeria requesting for virement of funds in the Appropriation Act, 2016, was read to the House on Tuesday, 25 October, 2016;

Also notes that the request was in respect of virement of funds appropriated for Special Intervention (Recurrent) and Special Intervention (Capital) to fund some critical Recurrent and Capital Items, and the request was necessitated by a number of reasons, including shortfalls in provisions of Personnel Cost, the inadequate provision for the Amnesty Programme, the need to sustain the war against insurgency and the depreciation of the Naira;

Aware that in the course of Implementing the Appropriation Act, 2016, several Ministries, Departments and Agencies (MDAs) presented issues pertaining to salary shortfalls as it affects the MDAs that are not under the platform of Integrated Personnel and Payroll Information System (IPPIS), and some MDAs that are under the IPPIS platform would be locked out as their Personnel Cost Budgets would not cover salaries for the rest of the year;

Also aware that the Nigerian Air Force needs to cover the foreign exchange differentials in the procurement of its critical equipment and augment the contingency vote, and also to provide for inadequacy in the provision for the National Youth Service Corps in the 2016 Budget, among others;

Resolves to:

Commit the Request to the Committee on Appropriations and to Other Committees to which the Virement relates to serve as Sub-Committees of the Committee on Appropriations (*Hon. Femi Gbajabiamila — House Leader*).

Agreed to.

Motion referred to the Committee on Appropriations.

17. Devastating Gully Erosion/Perennial Flooding in Esan West, Esan Central and Igueben Federal Constituency of Edo State

Motion made and Question proposed:

The House:

Notes that gully erosion is a major environmental problem that constitutes a threat to the continued existence of human communities in the rural and urban areas in Nigeria;

Also notes that the problem has greatly devastated Esan West/Esan Central and Igueben Federal Constituency, washing away houses, farmlands and roads;

Recalls that the devastating gully erosion which ravaged Ibore-Irrua and Eguare-Ewu communities in 2010 led to the award of contract, under the supervision of the Federal Ministry of Environment, for the reclamation of the land, but so far, no appreciable work has been done and the contractor has abandoned the sites;

Desirous that urgent steps be taken to reclaim all the areas already ravaged and stave off further devastation of the environment;

Resolves to:

- (i) urge the Ecological Fund Office to undertake a visit to the affected areas with a view to setting machinery in motion to arrest the incidence of gully erosion in the areas;
- (ii) also urge the Federal Ministry of Environment to work out pro-active measures to tackle the perennial flooding caused by changing climatic conditions and increasing urbanization; and
- (iii) mandate the Committee on Environment and Habitat to determine what led to the abandonment of the reclamation contract at Ibore - Eguare- Ewu awarded in 2010, and report back to the House within six (6) weeks for further legislative action (*Hon. Joseph Edionwele — Esan West, Esan Central and Igueben Federal Constituency*).

Agreed to.

(HR. 192/2016).

Motion referred to the Committee on Environment and Habitat, pursuant to Order Eight, Rule 9 (5).

18. Need to Supply Electricity to Ibafo/Magboro and Environs

Motion made and Question proposed:

The House:

Notes that Ibafo town in Obafemi Owode LGA of Ogun State with more than one million inhabitants and over 200 communities made up of five community development committees, has been without electricity supply for more than ten years, which has led to total paralysis of socio-economic activities, threat to lives and properties and retarded growth in the living standards, despite the people having spent millions of Naira to purchase poles, cables, transformers and electrical appliances to enable them to be connected to the national grid;

Disturbed that numerous complaints lodged with the regulatory authorities such as the Ibadan Electricity Distribution Company, the Nigerian Electricity Regulatory Commission and the National Integrated Power Projects (NIPP), and the peaceful protest staged on the 6 March, 2016, have not brought any succour to the people;

Concerned that all the contracts awarded by the National Integrated Power Projects aimed at providing a lasting solution to the hardships have been abandoned by the contractors;

Resolves to:

- (i) urge the Federal Ministry of Power, Works and Housing to ensure the completion of all electrical projects that will facilitate the connection of Ibafo area to the national grid; and to also ensure that the Ibadan Electricity Distribution Company provides electricity metres to Ibafo area without further delay; and

- (ii) mandate the Committee on Power to ensure implementation, and report back to the House within eight (8) weeks for further legislative action (*Hon. Mukaila Olayiwola Kazzim — Abeokuta North/Obafemi-Owode/Odeda Federal Constituency*).

Agreed to.

(**HR. 193/2016**).

Motion referred to the Committee on Power, pursuant to Order Eight, Rule 9 (5).

19. Need for Completion of the Reconstruction/Remodeling of Maiduguri International Airport
Motion made and Question proposed:

The House:

Notes that Maiduguri International Airport is one of the economically viable International Airports in Nigeria that offers both domestic and international aviation services, thereby bringing of revenues to the Federation;

Also notes that the neglect of Maiduguri International Airport has been detrimental to both Borno State and the Federation as its services have not been explored to its full potentials;

Aware that owing to infrastructural decay in the airport, the Federal Airports Authority of Nigeria (FAAN) awarded contracts in 2012, for the reconstruction and remodeling of the airport alongside other international airports in Nigeria;

Concerned that the contractor who began work at the airport in 2013, has since abandoned the site and despite improvements in the security situation in the State, the contractor has failed to resume and complete the work;

Also concerned that the quality of work so far done at the Airport is below acceptable standard both in conception and execution and convinced that there is an urgent need for the contractor to move back to site and complete the reconstruction work and remodeling of the airport according to specifications and international standards so that it will resume generation of revenues;

Resolves to:

- (i) urge the Federal Ministry of Transportation, and the Federal Airports Authority of Nigeria (FAAN) to cause the contractor to return to site to complete the reconstruction/remodeling work at the Maiduguri International Airport; and
- (ii) mandate the Committee on Aviation to ensure compliance and report back to the House within four (4) weeks for further legislative action (*Hon. Abdulkadir Rahis — Maiduguri Metropolitan Federal Constituency*).

Agreed to.

(**HR. 194/2016**).

Motion referred to the Committee on Aviation, pursuant to Order Eight, Rule 9 (5).

20. Need to Investigate Infrastructural Decay in Nigeria Police Academy, Wudil, Kano
Motion made and Question proposed:

The House:

Notes that the Police Academy, Wudil was established in 1989, in a bid to reposition the Nigeria Police for better service delivery;

Aware that the Academy, affiliated to Bayero University, Kano (BUK) offers five years academic and professional programmes for the cadets and eighteen months intensive course for graduates;

Also notes that in 2009, the School of regular course was established in the Academy, similar to the one at the Nigeria Defence Academy (NDA), Kaduna, with the aim of catching the aspiring police officers young and preparing them for better service delivery to Nigerians;

Also aware that in September 2013, the programmes took off and currently have about 2,000 cadets undergoing training at the Academy, but concerned that the aim for the establishment of the Academy seems to have been defeated as the structure for realizing its vision, mission and philosophy are no longer in place;

Concerned that the vision of a model security outfit which depends on quality and efficiency of its training and excellence of its academic standards can no longer be found in the institution as the infrastructural facilities that could make learning conducive, such as potable water, electricity supply and health facilities are in deplorable conditions;

Also concerned that monthly allowances due to the cadets and the instructors are not being paid, thereby dampening their moral, while poor feeding remains a major problem at the Academy;

Further concerned that instructors posted to the Academy work their transfers out of the institution, which compel the Management to allocate courses to youth corporers to teach;

Worried that several projects such as library, lecture theatre, hostel and faculty buildings, staff quarters and a host of others have been abandoned since 2009, and most of them were projects, which are usually cash backed when awarded;

Resolves to:

Mandate the Committees on Tertiary Education and Services, and Police Affairs to investigate the poor infrastructural facilities at the Police Academy, Wudil, Kano and report back to the House within eight (8) weeks for further legislation action (*Hon. Aminu Suleiman — Fagge Federal Constituency*).

Debate.

Agreed to.

The House:

Noted that the Police Academy, Wudil was established in 1989, in a bid to reposition the Nigeria Police for better service delivery;

Aware that the Academy, affiliated to Bayero University, Kano (BUK) offers five years academic and professional programmes for the cadets and eighteen months intensive course for graduates;

Also noted that in 2009, the School of regular course was established in the Academy, similar to the one at the Nigeria Defence Academy (NDA), Kaduna, with the aim of catching the aspiring police officers young and preparing them for better service delivery to Nigerians;

Also aware that in September 2013, the programmes took off and currently have about 2,000 cadets undergoing training at the Academy, but concerned that the aim for the establishment of the Academy seems to have been defeated as the structure for realizing its vision, mission and philosophy are no longer in place;

Concerned that the vision of a model security outfit which depends on quality and efficiency of its training and excellence of its academic standards can no longer be found in the institution as the infrastructural facilities that could make learning conducive, such as potable water, electricity supply and health facilities are in deplorable conditions;

Also concerned that monthly allowances due to the cadets and the instructors are not being paid, thereby dampening their moral, while poor feeding remains a major problem at the Academy;

Further concerned that instructors posted to the Academy work their transfers out of the institution, which compel the Management to allocate courses to youth corpsers to teach;

Worried that several projects such as library, lecture theatre, hostel and faculty buildings, staff quarters and a host of others have been abandoned since 2009, and most of them were projects, which are usually cash backed when awarded;

Resolved to:

Mandate the Committees on Tertiary Education and Services, and Police Affairs to investigate the poor infrastructural facilities at the Police Academy, Wudil, Kano and report back to the House within eight (8) weeks for further legislation action (**HR: 195/2016**).

21. Consideration of Reports

- (i) *A Bill for an Act to Establish the National Postgraduate College of Medical Laboratory Science and for Other Matters Connected Therewith (HB. 405) (Committee of the Whole) Motion made and Question proposed*, "That the House do consider the Report on a Bill for an Act to Establish the National Postgraduate College of Medical Laboratory Science and for Other Matters Connected Therewith (HB. 405) and approve the recommendations therein" (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question agreed to.

Question that the House do resolve into the Committee of the Whole to consider the Report — Agreed to.

(HOUSE IN COMMITTEE)

(Mr Deputy Speaker in the Chair)

**A BILL FOR AN ACT TO ESTABLISH THE NATIONAL POSTGRADUATE COLLEGE
OF MEDICAL LABORATORY SCIENCE AND FOR MATTERS CONNECTED THEREWITH**

Clause 1: Establishment of a National Postgraduate College of Medical Laboratory Science.

- (1) There is hereby established a National Postgraduate College of Medical Laboratory Science (in this Bill referred to as "the College").
- (2) The College shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.

- (3) The headquarters of the College shall be situated in the Federal Capital Territory of Nigeria or any other location deemed fit (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 1 stand part of the Bill — Agreed to.

Clause 2: The College shall have responsibility for the conduct of professional postgraduate examination of candidates in the various specialised branches of medical laboratory science and make awards in relation thereto accordingly (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 2 stand part of the Bill — Agreed to.

Clause 3: Fellows of the College.

- (1) The College shall consist of all Fellows of the College and its affairs shall be managed by:

(a) a Governing Board, and

(b) a Senate;

which shall each exercise such powers as are conferred on it by this Bill.

- (2) The supplementary provisions in the schedule to this Bill shall have effect with respect to the proceedings of the Governing Board and the Senate and the other matters therein mentioned (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 3 stand part of the Bill — Agreed to.

Clause 4: Governing Board of the College.

The Governing Board of the College shall consist of:

- (a) the President of the College who shall be the Chairman;
- (b) the Chairman and Registrar of the Medical Laboratory Science Council of Nigeria;
- (c) twelve representatives of the Senate;
- (d) the Federal Director of Medical Laboratory Service;
- (e) the Permanent Secretary, Federal Ministry of Health or his representative;
- (f) the Permanent Secretary, Federal Ministry of Finance or his representative;
- (g) the Permanent Secretary, Federal Ministry of Education or his representative;
- (h) the Permanent Secretary, Federal Ministry of Science and Technology or his representative;
- (i) two representatives of the Association of Medical Laboratory Scientists of Nigeria (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 4 stand part of the Bill — Agreed to.

Clause 5: The Governing Board shall be the governing body of the College and shall be charged with the general control and superintendence of the policy, finances and property of the College, including its public relations (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 5 stand part of the Bill — Agreed to.

Clause 6: **The Senate.**

The Senate shall consist of:

- (a) the President of the College who shall be Chairman;
- (b) the Chairman and Secretary of each Faculty board appointed in line with section 9 of this Bill; and
- (c) one representative elected by each Faculty (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 1 stand part of the Bill — Agreed to.

Clause 7: The Senate shall have responsibility for the running of the academic affairs of the College including:

- (a) the organisation and control of courses of study at the College and of the examinations held in connection with those courses;
- (b) the award of Fellowships, diplomas and such other qualifications as may be prescribed in connection with examinations held as aforesaid (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 7 stand part of the Bill — Agreed to.

- Clause 8:**
- (1) Subject to paragraph 1 of the Schedule to this Bill, the President shall be appointed by the Governing Board and shall hold office as such for three years.
 - (2) In the event of the death or incapacity of the President or if for any reason other than the effluxion of time the office of President is vacant, the Governing Board shall appoint another person as President for the residue of the term of the President.
 - (3) Members of the Governing Board appointed under paragraph (b) of section 4 above and members of the Senate appointed under paragraph (b) and (c) of section 6 above shall hold office for three years.
 - (4) Any of the members of the Governing Board or the Senate referred to in subsection (3) of this section may by notice to the Governing Board or, as the case may be, to the Senate resign his appointment, and where any such member ceases to hold office before his term of office would have expired by effluxion of time, the body by whom he was appointed or elected shall as soon as may be practicable appoint or, as the case may be, elect a person to fill the vacancy for the residue of term aforesaid (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 8 stand part of the Bill — Agreed to.

- Clause 9:** (1) Each Faculty shall comprise all Fellows in the appropriate specialty and the faculties in the College shall be as follows, that is to say:
- (a) the Faculty of Clinical Chemistry;
 - (b) the Faculty of Medical Bacteriology and Mycology;
 - (c) the Faculty of Haematology and Blood Transfusion Science;
 - (d) the Faculty of Cellular Pathology/Histoscience;
 - (e) the Faculty of Medical Parasitology and Entomology;
 - (f) the Faculty Diagnostic Molecular Biology
 - (g) the Faculty of Immunology;
 - (h) the Faculty of Medical Virology;
 - (i) the Faculty of Cytogenetics;
 - (j) the Faculty of Forensic Science;
 - (k) the Faculty of Biomedical Technology/Instrumentation;
 - (l) the Faculty of General Medical Laboratory Practice;
 - (m) the Faculty of any other specialty as may be prescribed by the Governing Board of the College.
- (2) Each Faculty shall elect from among its members not less than 7 but not more than 15 persons to serve as its Faculty Board, two of such persons being elected Chairman and Secretary respectively of the Faculty Board. All members so elected shall hold office for a period of three years.
- (3) Subject to such standing orders that may be made by the Senate for that purpose, each Faculty Board may carry out its duties as it deems fit.
- (4) Each Faculty shall appoint a court of examiners and the court shall be charged with the conduct of examinations under this section. Thereafter the Faculty Board shall make its recommendations to the Senate.
- (5) Members of a Faculty Board shall not be entitled to any emolument other than expenses reasonably incurred in travelling on Board's business, but members of a court of examiners shall be entitled to such remuneration as the Governing Board of the College may authorise (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 9 stand part of the Bill — Agreed to.

Clause 10: Where a candidate offers himself for examination under this Bill he/she shall satisfy the appropriate Faculty Board:

- (a) that he/she is a registered medical laboratory scientist with a current practising license; and

- (b) that he/she is in possession of and is therein named as the holder of a certificate from an institution recognised by the College showing that he/she has satisfactorily attended the prescribed course of training in the particular specialised branch and for prescribed period of the course (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 10 stand part of the Bill — Agreed to.

Clause 11: Where the College awards its Fellowship under this Bill the holder shall be entitled to status as a Fellow in the specialised branch of which the Fellowship is awarded (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 11 stand part of the Bill — Agreed to.

- Clause 12:**
- (1) The College may on the recommendation of the Senate award honorary Fellowship to persons of distinction in the community who need not be medical laboratory scientists, and without prejudice to subsection (2) below may on the like recommendation elect Fellows who need not have offered themselves for any post-graduate examination conducted by the College.
 - (2) No person shall be eligible for election as a fellow unless he/she already possesses a degree or other qualification registered with the Medical Laboratory Science Council of Nigeria and satisfies such other conditions as may be prescribed by the College (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 12 stand part of the Bill — Agreed to.

- Clause 13:** The College shall from time to time publish in the Federal Gazette and elsewhere as it may think fit:
- (a) particulars of the standards which are to be treated as sufficient for the purposes of examinations conducted by the College pursuant to this Bill.
 - (b) the list of institutions recognised for purposes of section 10 of this Bill (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 13 stand part of the Bill — Agreed to.

- Clause 14:**
- (1) The Governing Board may employ such staff of the College as it may consider necessary for the purpose of any of the functions conferred on anybody under this Bill.
 - (2) The Governing Board shall from among the officers appointed to subsection (1) of this section select a person to act as its Registrar and as Secretary to the Senate (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 14 stand part of the Bill — Agreed to.

Clause 15: Interpretation.

- (1) In this Bill:

"the College" means the Postgraduate College of Medical Laboratory Science established by section 1 of this Bill (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that the meaning of the words "the College" be as defined as in the interpretation to this Bill — Agreed to.

"Faculty Board" means any Faculty Board established by or pursuant to section 9 of this Bill (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that the meaning of the words "Faculty Board" be as defined as in the interpretation to this Bill — Agreed to.

"the Governing Board" means the Governing of the College referred to in section 3 of this Bill (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that the meaning of the words "the Governing Board" be as defined as in the interpretation to this Bill — Agreed to.

"the Medical Laboratory Science Council" means the Medical Laboratory Science Council of Nigeria (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that the meaning of the words "the Medical Laboratory Science Council" be as defined as in the interpretation to this Bill — Agreed to.

"the President" means the President of the College (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that the meaning of the words "the President" be as defined as in the interpretation to this Bill — Agreed to.

"the Senate" means the Senate of the College referred to in section 3 of this Bill (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that the meaning of the words "the Senate" be as defined as in the interpretation to this Bill — Agreed to.

- (2) Unless the context otherwise requires, expressions used in this Bill have the same meaning as in the Bill (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 1 stand part of the Bill — Agreed to.

Clause 16: Citation.

This Bill may be cited as the National Postgraduate College of Medical Laboratory Science Bill, 2016 (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that Clause 16 stand part of the Bill — Agreed to.

SCHEDULE

Section 3 (2)

SUPPLEMENTARY PROVISIONS RELATING TO THE GOVERNING BOARD, THE SENATE, ETC

*Composition of the First Senate and Faculty Boards and
Election of the First President of the College*

1. (1) Notwithstanding anything to the contrary in this Bill, the persons who immediately before the commencement of this Bill were Fellows of the Medical Laboratory Council of Nigeria shall on the commencement of this Bill become members of the corresponding Faculty Boards for purposes of this Bill and shall be deemed to have been appointed pursuant to section 9 of this Bill.
- (2) Appointments of members of Faculty Boards shall be made in accordance with the provisions of section 9 of this Bill.
- (3) Each Faculty shall elect the first representative of the corresponding Faculty on the Senate as specified in section 6 (c) of this Bill.
- (4) The first meeting of the Senate shall be summoned by the President of the Council and shall be presided over by him. At this meeting the Senate shall elect the person to be recommended to the Governing Board for appointment as the first President of the College as well as the first twelve representatives of the Senate on the Governing Board as specified in section 4 (c) of this Bill.
- (5) The first meeting of the Governing Board shall be called by the President of the Council and shall be presided over by him until the President of the College is appointed in the manner prescribed in section 8 (1) of this Bill.

Proceedings of the Governing Board, Senate, etc.

2. (1) The Governing Board may make standing orders regulating its proceedings or of any committee of the Board.
- (2) The Senate may make standing orders regulating its proceedings or of any Faculty Board or of any committee of the Senate.
3. The quorum:
 - (a) of the Governing Board shall be 7;
 - (b) of the Senate shall be 14;
 - (c) of any Faculty Board shall be determined by the Senate.
4. At any meeting of the Governing Board or the Senate, the President shall preside and if the President is absent the members present shall elect one of their numbers to preside at that meeting.

Committees of the Governing Board and Senate

5. (1) The Governing Board may appoint one or more committees to carry out on behalf of the Board such of its functions as the Board may determine but a decision of a committee shall be of no effect until it is confirmed by the Board.

- (2) The Senate may appoint one or more committees to carry out on behalf of the Senate such of its functions as the Senate may determine but a decision of a committee shall be of no effect until it is confirmed by the Senate.

Miscellaneous

6. (1) The fixing of the seal of the College shall be authenticated by the signature of the President or of some other member authorised generally or specially by the Governing Board for that purpose.
- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the College by any person generally or special authorised to act for that purpose by the Governing Board.
- (3) Any document purporting to be a document duly executed under the seal of the College shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.
7. The validity of any proceedings of the Governing Board, the Senate or and Faculty Board or of a committee of the Governing Board or the Senate shall not be affected by any vacancy in the membership of the body concerned or by any defect in the appointment of any member or by reason that a person not entitled to do so took part in the proceedings.
8. Any member of the Governing Board, and any person holding office on a committee of the Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or a committee thereof shall forthwith disclose his interest to the Board and shall not vote on any question relating to the contract or arrangement (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Question that the provisions of the Schedule stand part of the Bill — Agreed to.

Long Title:

A Bill for an Act to Establish the National Postgraduate College of Medical Laboratory Science and for Matters Connected Therewith (*Hon. Orker-Jev Emmanuel Yisa — Buruku Federal Constituency*).

Agreed to.

Chairman to report Bill.

(HOUSE IN PLENARY)

Mr Deputy Speaker in the Chair, reported that the House in Committee of the Whole considered the Report on a Bill for an Act to Establish the National Postgraduate College of Medical Laboratory Science and for Other Matters Connected Therewith (HB. 405) and approved Clauses 1-16, the Schedule, and the Long Title of the Bill.

Question that the House do adopt the Report of the Committee of the Whole — Agreed to.

(ii) **Committee on Treaties, Protocols and Agreements:**

Motion made and Question proposed, "That the House do consider the Report of the Committee on Treaties, Protocols and Agreements on a Bill for an Act to Provide for the Domestication and Enforcement in Nigeria of the Avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Kingdom of Spain and for Other Related Matters (HB. 444) and approve the recommendations therein" (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question agreed to.

Question that the House do resolve into the Committee of the Whole to consider the Report — Agreed to.

(HOUSE IN COMMITTEE)

(Mr Deputy Speaker in the Chair)

A BILL FOR AN ACT TO PROVIDE FOR THE DOMESTICATION AND ENFORCEMENT IN NIGERIA OF THE AVOIDANCE OF DOUBLE TAXATION AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE KINGDOM OF SPAIN AND FOR RELATED MATTERS

Committee Recommendation:

Clause 1: Domestication and enforcement of the Agreement between the Federal Republic of Nigeria and the Kingdom of Spain on the avoidance of Double Taxation and prevention of Fiscal Evasion.

As from the commencement of this Bill, the provisions of the Agreement between the Federal Republic of Nigeria and the Kingdom of Spain on the Avoidance of Double Taxation and Prevention of Fiscal Evasion (in this Bill referred to as Agreement) set out in the First Schedule to this Bill, shall:

- (a) have the force of law;
- (b) be given full recognition and effect; and
- (c) be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question that Clause 1 stand part of the Bill — Agreed to.

Committee Recommendation:

Clause 2: Protocol to the avoidance or Double Taxation Agreement between the Federal Republic of Nigeria and the Kingdom of Spain.

The Agreement shall include the provisions of the Protocol set out in the Second Schedule to this Bill for the effective application of the domestic laws in Nigeria and the laws of the Kingdom of Spain concerning taxes covered by the Agreement, particularly provisions on the prevention of fiscal evasion with respect to those taxes (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question that Clause 2 stand part of the Bill — Agreed to.

Committee Recommendation:

Clause 3: Short Title.

This Bill may be cited as the Avoidance of Double Taxation (Between the Federal Republic of Nigeria and the Kingdom of Spain) Bill, 2016 (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question that Clause 3 stand part of the Bill — Agreed to.

SCHEDULES

FIRST SCHEDULE

AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE KINGDOM OF SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Kingdom of Spain and the Federal Republic of Nigeria, desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, have agreed as follows:

CHAPTER I

SCOPE OF THE AGREEMENT

Article 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
 - (a) in Spain:
 - (i) the income tax on individuals;
 - (ii) the corporation tax;
 - (iii) the income tax on non residents;
 - (iv) the capital Tax; and
 - (v) local taxes on income and on capital (hereinafter referred to as "Spanish Tax").
 - (b) in Nigeria:
 - (i) the Personal Income Tax;

- (ii) the Companies Income Tax;
 - (iii) the Petroleum Profits Tax;
 - (iv) the Capital Gains Tax;
 - (v) the Education Tax; and
 - (vi) other taxes on income and capital (hereinafter referred to as "Nigerian Tax").
4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including its territorial sea and any area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;
 - (b) the term "Nigeria" means the Federal Republic of Nigeria including any area outside the territorial water of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the law of the Federal Republic of Nigeria concerning the Continental Shelf, as an area within which the right of the Federal Republic of Nigeria with respect to the sea-bed, its subsoil, its superjacent waters and their natural resources may be exercised now and in the future;
 - (c) the terms "Contracting State" and "the other Contracting State" mean Spain or Nigeria as the context requires;
 - (d) the term "person" includes an individual, a company and any other body of persons
 - (e) the term "company" means anybody corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (h) the term "competent authority" means:
 - (i) in Spain: the Minister of Economy and Finance or his authorised representative;
 - (ii) in Nigeria the Minister of Finance or his authorised representative;
 - (i) the term "national" means:
 - (i) any individual possessing the citizenship or nationality of a Contracting State;
 - (ii) any legal person, partnership or association or other entity deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes "of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.
2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:
- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop, and
 - (f) a mine, an oil or gas well, a quarry or any other place of exploitation of natural resources.
3. The term permanent establishment also encompasses:
 - (a) any place relating to the exploration of natural resources, provided such activities exists for a period or periods aggregating more than two months within any twelve-month period.
 - (b) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months, or where such project or activity being incidental to the sale of machinery or equipment continues for a period not exceeding six months and the charges payable for the project or activities exceeds 10 per cent of the sale price of the machinery or equipment free-on-board.
 - (c) the furnishing of services, including technical, management or consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue for the same project within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.
 - (d) a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained for any of the activities mentioned in paragraph 4 of this Article.
4. Notwithstanding the preceding provisions of this Article the term "permanent establishment" shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraph 1 and 2, where a person, other than an agent of an independent status to whom paragraph 6 applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those specified in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when conditions are made or imposed between that enterprise and the agent in their commercial or financial relations which differ from those which would have been made between independent persons, he will not be considered an agent of an independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment. However, when an enterprise of a Contracting State has a permanent establishment in the other Contracting State, and obtains profits directly through outlets other than the permanent establishment, from sales in that other State of the same goods and merchandise as those sold through that permanent establishment, or from the same business activities as those effected through that permanent establishment, such profits should be attributed to the permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions "expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. However, if such operation in international traffic is carried on by an enterprise of only one of the Contracting States, paragraph 1 will not be applicable, in such a case, the tax charged shall not exceed one percent of the earnings of the enterprise derived from the other Contracting State.

For the purpose of this paragraph, "earnings" means total income arising from the carriage of passenger, mails, livestock or goods loaded or shipped in the other State, less refunds and payment of wages and salaries of ground staff with respect to such operations in international traffic.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where:
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other State has been charged to tax in that other Contracting State and that other State agrees that the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between

independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
 - (b) 10 per cent of the gross amount of the dividends in all other cases. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment or a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
6. Notwithstanding any other provision of this Agreement, where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, this other Contracting State may tax any remittances or deemed remittances of profits transferred by the permanent establishment to the company which is a resident of the first-mentioned Contracting State, but the tax so charged shall not exceed 7.5 per cent of the gross amount.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 percent of the gross amount of interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the recipient is the beneficial owner of the interest and such interest is derived by the Government of the other Contracting State or a political subdivision or a local authority or any agency or instrumentality of that Government or local authority, the Central Bank or other banks wholly owned by the other Contracting State.
4. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income assimilated to income from money lent by the taxation laws of the State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interests, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12**ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) in the case of companies, 7.5 percent of the gross amount of the royalties.
 - (b) in all other cases, 3.75 percent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or 'scientific work including cinematographic films, or films, tapes and other means of image or sound reproduction, and for the use or the right to use of computer software, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are 'paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13**CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Article 16; 18 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - (c) the remuneration is not borne by a permanent-establishment or fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ARTISTES AND SPORTPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income mentioned in this Article shall be exempt from tax in the Contracting State in which the activities of the entertainer or sportsperson are exercised provided that these activities are supported from public funds of that State or of the other Contracting State or the activities are exercised under a cultural agreement or within the framework of a cultural or sports exchange programme approved by both Contracting States.

Article 18

PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or.

- (ii) did not become a resident of that State solely for the purpose of rendering the services.
- 2.
 - (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.
- 3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

STUDENTS AND TRAINEES

Payments which a student or business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

TEACHERS AND RESEARCHERS

- 1. A professor or teacher who visits one of the Contracting States for the purpose of teaching or engaging in research at a University or any other similarly recognised educational institution in that State and who, immediately before that visit was a resident of the other Contracting State shall not be taxed by the first-mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose.
- 2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the benefit of a person or persons or for the purpose of business profit.

Article 22

OTHER INCOME

- 1. Items of income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Agreement shall be taxable only in that State.
- 2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

CHAPTER IV

TAXATION OF CAPITAL

Article 23

CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other Contracting State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 24

ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated following either the provisions of the internal legislation of the Contracting States or the following provisions in accordance with the internal legislation of the Contracting States:

- (a) Where a resident of a Contracting State derives income or owns elements of capital which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned State shall allow:
- as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the other Contracting State;
 - as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the other Contracting State on the elements of capital;
 - the deduction of the underlying corporation tax shall be given in accordance with the internal legislation of each of the Contracting States.

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the same elements of capital which may be taxed in the other Contracting State.

- (b) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, that State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

CHAPTER VI

SPECIAL PROVISIONS

Article 25

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 26

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States present his case to the competent authority of the Contracting State of which he is a resident or, if his

case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the law of the requesting State.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).
- 4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the 'requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
- 5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by 'a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 28

ASSISTANCE IN THE COLLECTION OF TAXES

- 1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
- 2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
- 3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
- 4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
- 5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:
 - (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to carry out measures which would be contrary to public policy (*ordre public*);
 - (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 29

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

CHAPTER VII

FINAL PROVISIONS

Article 30

ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other, through diplomatic channels that the internal procedures required by each Contracting State for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force after the period of three months following the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:
- (i) regarding taxes periodically assessed, in respect of taxes on income relating to any taxable year beginning on or after the date on which the Agreement enters into force;
 - (ii) regarding all other cases, the date on which the Agreement enters into force.

Article 31

TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect regarding taxes periodically assessed, in respect of taxes on:

- (i) income relating to any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice is given.
- (ii) regarding all other cases, the first day of January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate in ABUJA on the 23rd day of JUNE, 2009, in the Spanish and English languages, both texts being equally authentic. In case of any divergence of interpretation it shall be resolved in accordance with the English text.

(Signed)

HE Dr Mansur Muktar Cuyaube
Minister of Finance
For the Federal Republic of Nigeria

(Signed)

HE Mr Miguel Angel Moratinos
Minister of Foreign Affairs and Cooperation
for the Kingdom of Spain (Hon. Yakub Abiodun
Balogun – Lagos Island II Federal Constituency).

Question that the provisions of the First Schedule stand part of the Bill — Agreed to.

SECOND SCHEDULE

PROTOCOL

At the moment of signing the Agreement between the Kingdom of Spain and Federal Republic of Nigeria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned have agreed upon the following provisions which shall be an integral part of the Agreement.

1. Ad.

- 1. The Contracting States declare that their domestic rules and procedures with respect to the abuses of law (including tax agreements) may be applied to the treatment of such abuses. In the case of Spain, abuses of law include situations covered by Article 15 of the General Tax Code (Ley General Tributaria Law 58/2003, 17th December) or any other similar provision in any tax law in force or to be enacted.

2. It is understood that the benefits under the Agreement shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting States or items of capital situated therein.
3. The Agreement does not prevent Contracting State to apply domestic Controlled Foreign Company rules.
4. The provisions of the Agreement shall not apply if the right giving rise to the income or capital was created or assigned mainly for the purpose of taking advantage of the Agreement and not for bona fide commercial reasons.

II. **Ad.**

When a resident in Nigeria owns capital in Spain, the provisions of the Agreement concerning taxes on capital shall only apply as long as this resident is liable to taxation on that capital in Nigeria.

III. **Ad. (to Articles 10, 11 and 12)**

It is agreed that if any agreement or convention between Nigeria and a member State of the Organisation for Economic Cooperation and Development (OECD) provides that Nigeria shall exempt from tax dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) arising in Nigeria, or limit the tax charged in Nigeria on such dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) to a rate lower than that provided for in paragraph 2 of Article 10, paragraph 2 of Article 11 or paragraph 2 of Article 12 of the Agreement, such exemption or lower rate shall automatically apply to dividends, interest or royalties arising in Nigeria and beneficially owned by a resident of Spain under the same conditions as if such exemption or lower rate had been specified in those paragraphs.

IV. **Ad. Limitation of Benefits**

If according to the provisions of Articles 6 to 23, the right of any Contracting State to tax income is limited, and according to the internal tax laws of the other Contracting State such income is regarded as income from foreign sources, or paid abroad, and therefore exempted from tax, the other Contracting State may tax such income as if the Agreement does not exist.

Should the income be remitted to Nigeria (the Contracting State of residence of the payee) within the term of four years since the date it was paid, upon prior petition by the taxpayer the mechanisms to avoid double taxation provided for in the Agreement could be applied.

Should the income be remitted to Spain (the Contracting State of residence of the payee) within the term of six years since the date it was paid, upon prior petition by the taxpayer the mechanisms to avoid double taxation provided for in the Agreement could be applied.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate in ABUJA on the 23rd day of JUNE, 2009, in the Spanish and English languages, both texts being equally authentic. In case of any divergence of interpretation it shall be resolved in accordance with the English text.

(Signed)

HE Dr Mansur Muktar Cuyaubé
Minister of Finance

For the Federal Republic of Nigeria

(Signed)

HE Mr Miguel Angel Moratinos
Minister of Foreign Affairs and Cooperation

for the Kingdom of Spain (Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency).

Question that the provisions of the Second Schedule stand part of the Bill — Agreed to.

Long Title:

A Bill for an Act to Provide for the Domestication and Enforcement in Nigeria of the Avoidance of Double Taxation Agreement Between the Federal Republic of Nigeria and the Kingdom of Spain and for Related Matters (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Agreed to.

Chairman to report Bill.

(HOUSE IN PLENARY)

Mr Deputy Speaker in the Chair, reported that the House in Committee of the Whole considered the Report of the Committee on Treaties, Protocols and Agreements on a Bill for an Act to Provide for the Domestication and Enforcement in Nigeria of the Avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Kingdom of Spain and for Other Related Matters (HB. 444) and approved Clauses 1 - 3, the First and Second Schedules, and the Long Title of the Bill.

Question that the House do adopt the Report of the Committee of the Whole — Agreed to.

(iii) Committee on Treaties, Protocols and Agreements:

Motion made and Question proposed, "That the House do consider the Report of the Committee on Treaties, Protocols and Agreements on a Bill for an Act to Provide for the Domestication and Enforcement in Nigeria of the Avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Republic of South Korea and for Other Related Matters (HB. 445) and approve the recommendations therein" (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question agreed to.

Question that the House do resolve into the Committee of the Whole to consider the Report — Agreed to.

(HOUSE IN COMMITTEE)

(Mr Deputy Speaker in the Chair)

A BILL FOR AN ACT TO PROVIDE FOR DOMESTICATION AND ENFORCEMENT IN NIGERIA OF THE AVOIDANCE OF DOUBLE TAXATION AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH KOREA AND FOR RELATED MATTERS

Committee Recommendation:

Clause 1: Domestication and enforcement of the Agreement between the Federal Republic of Nigeria and the Kingdom of South Korea on the avoidance of Double Taxation and prevention of Fiscal Evasion.

As from the commencement of this Bill, the provisions of the Agreement between the Federal Republic of Nigeria and the Republic of South Korea on the Avoidance of Double Taxation and Prevention of Fiscal Evasion (in this Bill referred to as Agreement) set out in the First Schedule to this Bill, shall:

- (a) have the force of law;
- (b) be given full recognition and effect; and

- (c) be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question that Clause 1 stand part of the Bill — Agreed to.

Committee Recommendation:

Clause 2: Protocol to the avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Republic of South Korea.

The Agreement shall include the provisions of the Protocol set out in the Second Schedule to this Bill for the effective application of the domestic laws in Nigeria and the laws of the Republic of South Korea concerning taxes covered by the Agreement, particularly provisions on the prevention of fiscal evasion with respect to those taxes (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question that Clause 2 stand part of the Bill — Agreed to.

Committee Recommendation:

Clause 3: Short Title.

This Bill may be cited as the Avoidance of Double Taxation (Between the Federal Republic Nigeria and the Republic of South Korea) Bill, 2016 (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question that Clause 3 stand part of the Bill — Agreed to.

SCHEDULES

FIRST SCHEDULE

AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the Federal Republic of Nigeria and the Government of the Republic of Korea;

Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains;

Have agreed as follows:

CHAPTER I

SCOPE OF THE AGREEMENT

Article 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

1. The taxes to which this Agreement shall apply are:

- (a) in the case of Nigeria:
 - (i) the education tax; and
 - (ii) other taxes on income and capital gains
 - (iii) the personal income tax;
 - (iv) the companies income tax;
 - (v) the petroleum profits tax;
 - (vi) capital gains tax (hereinafter referred to as "Nigerian tax");
 - (b) in the case of Korea:
 - (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the inhabitant tax where charged by reference to the income tax or the corporation tax;
 - (iv) the special tax for rural development; and
 - (v) other taxes on income and capital gains (hereinafter referred to as "Korean tax").
2. This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term "Nigeria" means the Federal Republic of Nigeria including any area outside the territorial waters of the Federal Republic of Nigeria which, in accordance with international law, has been or may hereafter be designated under the laws of the Federal Republic of Nigeria concerning the continental shelf as an area within which the rights of the Federal Republic of Nigeria with respect to the sea bed, its subsoil, its superjacent waters and their natural resources may be exercised now and in the future;
 - (b) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of

Korea with respect to the waters, sea-bed and sub-soil, and their natural resources may be exercised now and in the future;

- (c) the terms "a Contracting State" and "the other Contracting State" mean Nigeria or Korea, as the context requires;
 - (d) the term "person" includes an individual, a company and any other body of persons;
 - (e) the term "company" means anybody corporate or any entity which is treated as a body corporate for tax purposes under the laws of each Contracting State;
 - (f) the term "enterprise" applies to the carrying on of any business;
 - (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term "national" in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or the citizenship of a Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in-force in that Contracting State;
 - (i) the term, "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (j) the term "competent authority" means, in the case of Nigeria, the Minister of Finance or his authorized representative, and in the case of Korea, the Minister of Finance and Economy or his authorized representative; and
 - (k) the term "business" includes the performance of professional services and of other activities of an independent character.
2. As regards the application of this Agreement at any time by a Contracting State, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national; and
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" fixed place of business through which the business of an enterprise is wholly carried on.
2. The term "permanent establishment" includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop; and
 - (f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources.
3. The term "permanent establishment" also encompasses:
 - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
 - (b) the furnishing of services, including technical, management or consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue for the same project within a Contracting State for a period or periods aggregating more than six months within any twelve-month period; and
 - (c) a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained for any of the activities mentioned in paragraph 4 of this Article.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 6 applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those specified in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under provisions of that paragraph.
6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when conditions are made or imposed between that enterprise and the agent in their commercial financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment. However, when an enterprise of a Contracting State has a permanent establishment in the other Contracting State, and obtains profits directly through outlets other than the permanent establishment, from sales in that other State of the same goods and merchandise as those sold through that permanent establishment, or from the same business activities as those effected through that permanent establishment, such profits should be attributed to the permanent establishment.
2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to the permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is a good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. However, if such operation in international traffic is carried on by an enterprise of only one of the Contracting States, paragraph 1 will not be applicable. In such a case, the tax charged shall not exceed the lesser of:
 - (a) one per cent of such earnings; and
 - (b) the lower amount of Nigerian tax that would have been imposed on such earnings if they had been derived by an enterprise from the operation of ships or aircraft in international traffic in any third State.

For the purpose of this paragraph, "earnings" means total income arising from the carriage of passenger, mail, livestock or goods loaded or shipped in the other State, less refunds and payment of wages and salaries of ground staff with respect to such operations in international traffic.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where:
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State;
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the taxation authorities of the Contracting States shall, if necessary, consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
 - (a) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
 - (b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 7.5 per cent of the gross amount of interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State including a political subdivision or a local authority thereof, the central bank of that other Contracting State or any financial institutions owned by that Government, or by any resident of the other Contracting State with respect to debt-claims, guaranteed or indirectly financed by the Government of that other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institutions owned by that Government shall be exempt from tax in the first-mentioned Contracting State.
4. For the purpose of paragraph 3, the terms "the Central Bank" and "financial institutions owned by that government" mean:
 - (a) in the case of Nigeria:
 - (i) the Central Bank of Nigeria; and
 - (ii) such other financial institution the capital of which is owned by the Government of the Federal Republic of Nigeria as may be agreed upon from time to time between the Governments of the two Contracting States;
 - (b) in the case of Korea:
 - (i) the Central Bank (the Bank of Korea);
 - (ii) the Korea Export-Import Bank;
 - (iii) the Korea Development Bank;
 - (iv) the Korea Export Insurance Corporation;
 - (v) the Korea Investment Corporation; and
 - (vi) such other financial institution the capital of which is owned by the Government of the Republic of Korea as may be agreed upon from time to time between the Governments of the two Contracting States.
5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.
7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness all which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds for whatever reasons the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.
2. However such royalties may also be taxed in the Contracting State from which they are derived and according to the law of that State, but where the beneficial owner of the royalties is subject to tax thereon in the other State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as consideration for the use of, or the right to use any copy right of literary, artistic or scientific work including cinematograph films or films, tapes and other means of image or sound reproduction, for the use of or the right to use computer software, any patent, trademark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a

Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of any property other than those referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident, of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15**DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period; and
 - (b) the remuneration is paid by or on behalf of, an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

Article 16**DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17**ARTISTES AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State, as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 18

PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

GOVERNMENT SERVICE

1.
 - (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2.
 - (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of paragraphs 1 and 2 shall likewise apply in respect of remuneration or pensions paid by:
 - (a) in the case of Nigeria:

the Central Bank of Nigeria or other institutions as may be specified and agreed upon in letters exchanged by the competent authorities of the Contracting States, provided such banks and institutions perform functions of a governmental nature and only engage in non-profit-making activities; and
 - (b) in the case of Korea:

the Bank of Korea, the Korea Export-Import Bank, the Korea Export Insurance Corporation, the Korea Development Bank, the Korea Trade Investment Promotion Agency or other institutions as may be specified and agreed upon in letters exchanged by the competent authorities of the Contracting States, provided such banks and institutions perform functions of a governmental nature and only engage in non-profit-making activities.
4. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

STUDENTS AND APPRENTICES

1. An individual who immediately before visiting a Contracting State is or was a resident of the other Contracting State and who is present in the first-mentioned State primarily as a student at a recognized university, college, school or other similar educational institution in the first-mentioned State or as a business or technical apprentice therein, from the date of his first arrival in the first-mentioned State in connection with that visit, shall be exempt from tax in that first-mentioned State on:
 - (a) all remittances from abroad for the purposes of his maintenance, education and training; and
 - (b) any remuneration for personal services rendered in the first-mentioned State with a view to supplementing the resources available to him for such purposes.
2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of study, research or training, as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:
 - (a) on the amount of such grant, allowance or award; and
 - (b) on all remittances from abroad for the purposes of his maintenance, education or training.

Article 21

TEACHERS AND RESEARCHERS

1. A professor or teacher who visits one of the Contracting States for the purpose of teaching or engaging in research at a university or any other similarly recognized educational institution in that State and who, immediately before that visit was a resident of the other Contracting State, shall be exempted from tax by the first-mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose. During the said period of two years, the other Contracting State shall also exempt him from tax in respect of such remuneration from the first-mentioned State in respect of the teaching or research.
2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the benefit of a specific person or persons.

Article 22

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a

permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

CHAPTER IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23

ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of Nigerian tax law regarding the allowance as a credit against Nigerian tax of tax payable in any country other than Nigeria (which shall not affect the general principle hereof):
 - (a) the Korean tax payable (excluding, in the case of dividends, tax payable in respect of profits out of which the dividend is paid) under the laws of Korea and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within Korea, shall be allowed as a credit against Nigerian tax payable in respect of that income. The credit shall not, however, exceed that proportion of Nigerian tax which the income from sources within Korea bears to the entire income subject to Nigerian tax;
 - (b) in the case of dividends paid by a company which is a resident of Korea to a company which is a resident of Nigeria and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account (in addition to any Korean tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Korean tax payable by the company paying the dividend in respect of the profits out of which Such dividend is paid.
2. Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof):
 - (a) the Nigerian tax payable (excluding, in the case of dividends, tax payable in respect of profits out of which the dividend is paid) under the laws of Nigeria and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within Nigeria, shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Nigeria bears to the entire income subject to Korean tax;
 - (b) in the case of dividends paid by a company which is a resident of Nigeria to a company which is a resident of Korea and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account (in addition to any Nigerian tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Nigerian tax payable by the company paying the dividend in respect of the profits out of which such dividend is paid.
3. The tax payable in a Contracting State mentioned in subparagraphs (a) of paragraph 1 and paragraph 2 of this Article, shall be deemed to include the tax which would have been payable but for the legal provisions concerning tax reduction, exemption or other tax incentives of the Contracting State for the promotion of economic development. For the purpose of this paragraph, the amount of tax shall be deemed to be 10 per cent of the gross

amount of the dividends, interest and royalties in the case of paragraph 2 of Article 10, paragraph 2 of Article 11 and paragraph 2 of Article 12, respectively.

This provision shall apply for a period of ten years starting from the first day of the calendar year when this Agreement enters into force.

4. Notwithstanding paragraph 3 of Article 23, a resident of a Contracting State deriving income from the other Contracting State, being income referred to in that paragraph, shall not be deemed to have paid tax in respect of such income where the competent authority of a Contracting State considers, after consultation with the competent authority of the other Contracting State, that it is inappropriate to grant the benefits of paragraph 3 of Article 23 to the said resident, having regard to:
 - (a) whether any arrangements have been entered into by any person for the purpose of obtaining advantage of paragraph 3 of Article 23 for the benefits of that person or any other person; or
 - (b) whether any benefit accrues or may accrue to any person who is neither a resident of a Contracting State nor a resident of the other Contracting State; or
 - (c) the prevention of fraud, evasion or avoidance of the taxes to which this Agreement applies; or
 - (d) any other matter which the competent authorities consider relevant in the particular circumstances of the case including any submissions from a resident of either Contracting State.

CHAPTER V

SPECIAL PROVISIONS

Article 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and deductions for tax purposes which are granted to individuals as residents.
4. Except where the provisions of Article 9, paragraphs 7 and 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the taxation authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such

purposes. They may disclose the information in public court proceedings or judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensuring its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for

purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:
 - (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection or
 - (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensuring its collection, the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to carry out measures which would be contrary to public policy (*ordre public*);
 - (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be available under its laws or administrative practice;
 - (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 28

MEMBERS OF DIPLOMATIC MISSIONS & CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic mission or consular posts under the general rules of international law or under the provisions of special agreements.

CHAPTER VI

FINAL PROVISIONS

Article 29

ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Agreement have been complied with.
2. This Agreement shall enter into force on the thirtieth day after the date of the later of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:
 - (a) in Nigeria:
 - (i) in respect of tax withheld at source on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after the first day of January of the year in which the Agreement enters into force;
 - (ii) in respect of other taxes, in relation to income of the period beginning on or after the first day of January of the year in which the Agreement enters into force;
 - (b) in Korea:
 - (i) in respect of tax withheld at source from amounts paid or credited on or after the first day of January of the year in which the Agreement enters into force;
 - (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January of the year in which the Agreement enters into force.

Article 30

TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year in which this Agreement comes into force. In such event, this Agreement shall cease to have effect:

- (a) in Nigeria:
 - (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident on or after 1st January in the calendar year immediately following that in which the notice of termination is given; and
 - (ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the notice of termination is given;

(b) in Korea:

- (i) in respect of tax withheld at source from amounts paid or credited to non-residents on or after the first day of January in the calendar year following that in which the notice is given; and
- (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the calendar year following that in which the notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

(Signed)

Nenadi E. Usman

*for the Government of the
Federal Republic of Nigeria*

(Signed)

*for the Government of
the Republic of Korea (Hon. Yakub
Abiodun Balogun — Lagos Island II
Federal Constituency).*

Question that the provisions of the First Schedule stand part of the Bill — Agreed to.

SECOND SCHEDULE

PROTOCOL

At the moment of signing the Agreement between the Federal Republic of Nigeria and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:

1. With respect to paragraph 3 (c) of Article 5, it is understood that losses incurred in connection with a mine, an oil or gas well, a quarry or any place of exploration for or the exploitation of natural resources shall be carried forward and allowed as a set-off against its profits derived from the same trade or business for a period of 4 years from the date when such losses were incurred.
2. In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business, including the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, in the other Contracting State through a permanent establishment situated therein, the profits of the permanent establishment should be determined on the basis of the income earned which is directly attributable to the actual business activity of the permanent establishment.
3. The Agreement shall not apply to any company, trust or other entity that is a resident of a Contracting State and is beneficially owned or controlled, directly or indirectly, by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or other entity by that State (after taking into account any reduction or offset of the amount of tax in any manner, including a refund, reimbursement, contribution, credit or allowance to the company, trust, or other entity or to any other person) is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or other entity, as the case may be, were beneficially owned by one or more individuals who were residents of that State. However, this paragraph shall not apply if 90 per cent or more of the income on which the lower amount of tax is imposed is derived exclusively from the

active conduct of a trade or business, other than an investment business, carried on by it in that Contracting State.

4. The provisions of this Agreement shall not apply if the right giving rise to the income or capital gains was created or assigned mainly for the purpose of taking advantage of this Agreement and not for bona fide commercial reasons. It is also understood that the benefits under this Agreement shall not be granted to a person that is not the beneficial owner of the items of income or capital gains derived from the other Contracting State.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Seoul, this 6th day of November of the year 2006, in the English and Korean languages, both texts being equally authentic.

(Signed)

Nenadi E. Usman

*for the Government of the
Federal Republic of Nigeria*

(Signed)

*for the Government of
the Republic of Korea (Hon. Yakub
Abiodun Balogun — Lagos Island II
Federal Constituency).*

Question that the provisions of the Second Schedule stand part of the Bill — Agreed to.

Long Title:

A Bill for an Act to Provide for Domestication and Enforcement in Nigeria of the Avoidance of Double Taxation Agreement Between the Federal Republic of Nigeria and the Republic of South Korea and for Related Matters (Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency).

Agreed to.

Chairman to report Bill.

(HOUSE IN PLENARY)

Mr Deputy Speaker in the Chair, reported that the House in Committee of the Whole considered the Report of the Committee on Treaties, Protocols and Agreements on a Bill for an Act to Provide for the Domestication and Enforcement in Nigeria of the Avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Republic of South Korea and for Other Related Matters (HB. 445) and approved Clauses 1 - 3, the First and Second Schedules, and the Long Title of the Bill.

Question that the House do adopt the Report of the Committee of the Whole — Agreed to.

(iv) Committee on Treaties, Protocols and Agreements:

Motion made and Question proposed, "That the House do consider the Report of the Committee on Treaties, Protocols and Agreements on a Bill for an Act to Provide for the Domestication and Enforcement in Nigeria of the Avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Kingdom of Sweden and for Other Related Matters (HB. 443) and approve the recommendations therein" (Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency).

Question agreed to.

Question that the House do resolve into the Committee of the Whole to consider the Report — Agreed to.

(HOUSE IN COMMITTEE)

(Mr Deputy Speaker in the Chair)

A BILL FOR AN ACT TO PROVIDE FOR THE DOMESTICATION AND ENFORCEMENT IN NIGERIA OF THE AVOIDANCE OF DOUBLE TAXATION AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE KINGDOM OF SWEDEN AND FOR RELATED MATTERS

Committee Recommendation:

Clause 1: **Domestication and enforcement of the Agreement between the Federal Republic of Nigeria and the Kingdom of Sweden on the avoidance of Double Taxation and prevention of Fiscal Evasion.**

As from the commencement of this Bill, the provisions of the Agreement between the Federal Republic of Nigeria and the Kingdom of Sweden on the Avoidance of Double Taxation and Prevention of Fiscal Evasion (in this Bill referred to as Agreement) set out in the First Schedule to this Bill, shall:

- (a) have the force of law;
- (b) be given full recognition and effect; and
- (c) be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question that Clause 1 stand part of the Bill — Agreed to.

Committee Recommendation:

Clause 2: **Protocol to the avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Kingdom of Sweden.**

The Agreement shall include the provisions of the Protocol set out in the Second Schedule to this Bill for the effective application of the domestic laws in Nigeria and the laws of the Kingdom of Sweden concerning taxes covered by the Agreement, particularly provisions on the prevention of fiscal evasion with respect to those taxes (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question that Clause 2 stand part of the Bill — Agreed to.

Committee Recommendation:

Clause 3: **Short Title.**

This Bill may be cited as the Avoidance of Double Taxation (Between the Federal Republic of Nigeria and the Kingdom of Sweden) Bill, 2016 (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Question that Clause 3 stand part of the Bill — Agreed to.

SCHEDULES

FIRST SCHEDULE

AGREEMENT BETWEEN THE KINGDOM OF SWEDEN AND THE FEDERAL REPUBLIC OF NIGERIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

The Government of the Kingdom of Sweden and the Government of the Federal Republic of Nigeria, desiring to conclude an Agreement (or the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, have agreed as follows:

ARTICLE 1 — PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both or the Contracting States.

ARTICLE 2 — TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which this Agreement shall apply are:
 - (a) in Nigeria:
 - (i) the Personal Income Tax;
 - (ii) the Companies Income Tax;
 - (iii) the Petroleum Profits Tax;
 - (iv) the Capital Gains Tax; and
 - (v) the Education Tax (hereinafter referred to as "Nigerian tax");
 - (b) in Sweden:
 - (i) the national income tax (den statliga inkomstskatten);
 - (ii) the withholding tax on dividends (kupongskatten);
 - (iii) the income tax on non-residents (den sSrskilda inkomststatten for Utomlands bosatta);
 - (iv) the income tax on non-resident artistes and athletes (den sSrskilda mkornstskatten for utomlands bosatta arlistar m.fl.); and
 - (v) the municipal income tax (den kommunala inkomstskatten) (hereinafter referred to as "Swedish tax").
4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of the taxes referred to in paragraph 3 of this Article. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3 — GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Nigeria" means the Federal Republic of Nigeria including any area outside the territorial waters of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria concerning the Continental Shelf, as an area within which the rig his of the Federal Republic of Nigeria with respect to the sea-bed and subsoil and their natural resources may be exercised;
- (b) the term "Sweden" means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Nigeria or Sweden, as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means anybody corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term "enterprise" applies io the carrying on of any business,
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "competent authority" means:
 - (i) in Nigeria. the Minister of Finance or his authorized representative;
 - (ii) in Sweden, the Minister of Finance, his authorised representative or the authority which is designated as a competent authority for the purposes of this Agreement;
- (i) the term "International traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "national" means:
 - (i) any individual possessing the citizenship or nationality of a Contracting State;
 - (ii) any legal person, partnership, association or other entity deriving its status as such trorn the laws in force in a Contracting State;
- (k) the term "business" includes the performance of professional services and of other activities of an independent character.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable lax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 — RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State, any governmental body or agency, political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.
2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

ARTICLE 5 — PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term "permanent establishment" includes especially:

 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - (g) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months; and

- (h) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months within any twelvemonth period.
- 3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this Article, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character notwithstanding the fact that such fixed place of business is otherwise maintained for any of the activities mentioned in paragraph 3 of this Article.
- 5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
- 6. A person, other than an agent at an independent status to whom paragraph 5 of this Article applies/who acts in a Contracting State on behalf of an enterprise of the other Contracting State shall, unless the activities of such person are limited to those mentioned in paragraph 3 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:
 - (a) he has, and habitually exercises in that State, an authority to conclude contracts or carries on any business activities on behalf of the enterprise, or
 - (b) he habitually secures orders for the sales of goods or merchandise in that State exclusively or almost exclusively on behalf of the enterprise or other enterprises controlled by it or which have a controlling interest in it.
- 7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 — INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise.

ARTICLE 7 — BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:
 - (a) that permanent establishment;
 - (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
 - (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment
2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are shown to have been incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for

amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise. Provided that where that permanent establishment is also used as a sales outlet for the goods or merchandise so purchased the profits on such sales may be attributed to that permanent establishment. For the purpose of this paragraph sales outlet shall be deemed to have the same meaning as in paragraph 4 of Article 5.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 — SHIPPING AND AIR TRANSPORT

1. A resident of a Contracting State shall on reciprocal basis be exempt from tax in the other Contracting State in respect of profits or gains derived from the operations of ships or aircraft in international traffic.
2. With respect to profits derived by the air transport consortium Scandinavian Airlines System (SAS), the provisions of paragraph 1 of this Article shall apply only to such part of the profits as corresponds to the participation held in that consortium by SAS Sverige AS, the Swedish partner of SAS.
3. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency

ARTICLE 9 — ASSOCIATED ENTERPRISES

1. Where:
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises

had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 — DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
 - (b) 10 per cent of the gross amount of the dividends in all other cases. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Where a Company which is a resident of a Contracting State derives profit or income from the other Contracting State, the other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the Company's undistributed profits to a tax on the Company's undistributed profit, even if the dividends paid or the undistributed profits consists wholly or partly of profits or income arising in such other State.
6. The provisions of this article shall not apply if the right given raise to the dividend was created or assigned mainly for the purpose of taking advantage of this article and not for bona-fide commercial reasons.

ARTICLE 11 — INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the interest. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this limitation
3. Notwithstanding the provisions of paragraph 2 of this Article, interest mentioned in paragraph 1 of this Article shall be taxable only in the Contracting State where the beneficial owner of the interest is a resident if one of the following requirements is fulfilled:
 - (a) the recipient of the interest is the Contracting State itself, a statutory body, a political subdivision, a focal authority thereof or any other agency or instrumentality thereof; or
 - (b) the interest is paid in respect of a loan which has been guaranteed by the Government of the Contracting State where the payer of the interest is a resident; or
 - (c) in the case of Sweden, the interest is paid in respect of a loan granted or guaranteed by The Swedish International Development Cooperation Agency (SIDA). The Swedish Export Credits Guarantee Board (Exportkreditnämnden) or any other institution of a public character with the objective to promote exports or development.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State due regard being had to the other provisions of this Agreement.
8. The provisions of this Article shall not apply if the right or property giving rise to the interest was created or assigned mainly for the purpose of taking advantage of this Article and not for bona-fide commercial reasons.

ARTICLE 12 — ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the royalties. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this limitation.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise. Through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment in such case the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.
7. The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona-fide commercial reasons.

ARTICLE 13 — CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation at such ships or aircraft, shall be taxable only in that State.

With respect to gains derived by the air transport consortium Scandinavian Airlines System (SAS), the provisions of this paragraph shall apply only to such part of the gains as corresponds to the participation held in that consortium by SAS Sverige AB the Swedish partner of SAS.

4. Subject to the provisions of paragraph 1 of this Article, gains derived by a resident of a Contracting State from the alienation of shares in a company shall be taxable only in that State except if the alienator is an individual who has been a resident of the other Contracting State and who has become a resident of the first-mentioned Contracting State, in such case the gains may be taxed in the other Contracting State but only if the company, which shares are being alienated, is a resident of that other State and if the alienation of the shares occurs 21 any time during the ten years next following the date on which the individual has ceased to be a resident of that other State.

ARTICLE 14 — INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment which the employer has in the other State
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State. Where a resident of Sweden derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the air transport consortium Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Sweden.

ARTICLE 15 — DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16 — ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Article 14, income derived by a resident of a Contracting State as an artiste, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an artiste or sportsperson in his capacity as such accrues not to the artiste or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the artiste or sportsperson are exercised.

ARTICLE 17 — PENSIONS, ANNUITIES AND SIMILAR PAYMENTS

1. Pensions and other similar remuneration, disbursements under the Social Security legislation and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State.
2. The term "annuity" means a stated sum payable periodically at stated times during the or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 18 — GOVERNMENT SERVICE

1. (a) Salaries, wages and other remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
(b) However, such salaries, wages and other remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provisions of Articles 14, 15 and 16 shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 19 — STUDENTS AND TRAINEES

Payments which a student or business trainee or apprentice who is or was immediately before visiting a Contracting State a resident of the other contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 20 — TEACHERS AND RESEARCHERS

1. Notwithstanding the provisions of Article 14, a professor or teacher who visits a Contracting State for the purpose of teaching or research at a university or any other similarly recognized educational institution in that State and who, immediately before that visit, was a resident of the other Contracting State shall be exempt from tax in the first-mentioned State in respect

of any remuneration for such teaching and research for a period not exceeding one year from the date of his first arrival in the first-mentioned State for such purposes, provided that such remuneration is derived by him from sources in the other Contracting State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the benefit of a specific person or persons.

ARTICLE 21 — OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 22 — ELIMINATION OF DOUBLE TAXATION

1. In the case of Nigeria:

Subject to the provisions of the laws of Nigeria regarding the allowance as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle thereof) Swedish tax payable under the laws of Sweden and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Sweden (excluding in the case of a dividend, tax payable in respect of the profits out of which dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profits, income or chargeable gains by reference to which Swedish tax is computed.

2. In the case of Sweden:

- (a) Where a resident of Sweden derives income which under the laws of Nigeria and in accordance with the provisions of this Agreement may be taxed in Nigeria, Sweden shall allow — subject to the provisions of the laws of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) — as a deduction from the tax on such income, an amount equal to the Nigerian tax paid in respect of such income.
- (b) Where a resident of Sweden derives income which, in accordance with the provisions of this agreement, shall be taxable only in Nigeria, Sweden may, when determining the graduated rate of Swedish tax, take into account the income which shall be taxable only in Nigeria.
- (c) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, dividends paid by a company which is a resident of Nigeria to a company which is a resident of Sweden shall be exempt from Swedish tax according to the provisions of Swedish laws governing the exemption of tax on dividends paid to Swedish companies by companies abroad.

- (d) For the purpose of sub-paragraph (a) of this paragraph, when a Swedish company has a permanent establishment in Nigeria, the term "Nigerian tax paid" shall be deemed to include the Nigerian tax which would have been paid but for any reduction or time-limited exemption of tax granted under incentive provisions contained in Nigerian laws designed to promote economic development to the extent that such exemption or reduction is granted for profits from the export of Nigerian products, the mining industry, the installation, operation or maintenance of fixed or mobile telecommunication systems and related equipment, industrial and manufacturing activities: oil- and gas Industry as well as agriculture and tourism (including restaurants and hotels), provided that the activities have been carried out in Nigeria. For the purpose of subparagraph (c) of this paragraph, a tax of 15 per cent shall be considered to have been paid for such activities under those conditions mentioned in the previous sentence.
- (e) For the purposes of sub-paragraph (a) of this paragraph the Nigerian tax paid in respect of royalties received as a consideration for the use of any patent, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, shall, where it has been used in the export of Nigerian products, the mining industry, the installation, operation or maintenance of fixed or mobile telecommunication systems and related equipment, industrial and manufacturing activities, oil-and gas industry as well as agriculture and tourism (including restaurants and hotels), provided that the activities have been carried out in Nigeria, in addition to the Nigerian tax actually paid be considered to have been paid with an additional amount of 5 per cent, or if no such tax has been charged be considered to have been paid with 5 per cent, of the gross amount of such royalties.
- (f) The provisions of sub-paragraphs (d) and (e) shall apply only for the first ten years during which this Agreement is effective. This period may be extended by a mutual agreement between the competent authorities.

ARTICLE 23 — NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs or reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subject in the first-mentioned State to any taxation or any requirement connected

therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected,

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 24 — MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within six years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding anytime limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 25 — EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities may through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made including, where appropriate, exchanges of information regarding tax avoidance.
2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 26 — LIMITATIONS ON BENEFITS

Notwithstanding any other provisions of this Agreement, where:

- (a) a company that is a resident of a Contracting State derives its income primarily from other States
 - (i) from activities such as banking, shipping, financing or insurance or
 - (ii) from being the headquarters, co-ordination centre or similar entity providing administrative services or other support to a group of companies which carry on business primarily in other States; and
- (b) such income would bear a significantly lower tax under the laws of that State than income from similar activities carried out within that State or from being the headquarters, co-ordination centre or similar entity providing administrative services or other support to a group of companies which carry on business in that State, as the case may be,

any provisions of this Agreement conferring an exemption or a reduction of tax shall not apply to the income of such company or to the dividends paid by such company.

ARTICLE 27 — MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 — ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other of the completion of the procedures required by its laws for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:
 - (a) in Nigeria:
 - (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after the first day of January in the calendar year immediately following that in which the Agreement enters into force;
 - (ii) in respect of other taxes, in relation to income of any basis period beginning on or after the first day of January in the calendar year immediately following that in which the Agreement enters into force;
 - (b) in Sweden:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the date on which the Agreement enters into force;

- (ii) in respect of other taxes on income and on capital gains, on taxes chargeable for any tax year beginning on or after the first day of January of the year next following the date on which the Agreement enters into force.

ARTICLE 29 — TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year. In such case, the Agreement shall cease to have effect:

(a) in Nigeria:

- (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after the first day of January in the calendar year immediately following the end of the six-month period;
- (ii) in respect of other taxes, in relation to income on any basis period beginning on or after the first day of January in the calendar year immediately following the end of the six-month period;

(b) in Sweden:

- (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the end of the six-month period;
- (ii) in respect of other taxes on income and on capital gains, on income chargeable for any tax year beginning on or after the first day of January of the year next following the end of the six-month period.

In witness whereof the undersigned being duly authorised thereto have signed this Agreement.

Done at Stockholm, this 18th day of November, 2004, in duplicates in the English language.

(Signed)

FOR THE GOVERNMENT
OF THE KINGDOM OF
SWEDEN

(Signed)

FOR THE GOVERNMENT
OF FEDERAL REPUBLIC
OF NIGERIA • (*Hon. Yakub Abiodun
Balogun — Lagos Island II Federal
Constituency*).

Question that the provisions of the First Schedule stand part of the Bill — Agreed to.

SECOND SCHEDULE

PROTOCOL TO THE AGREEMENT BETWEEN THE KINGDOM OF SWEDEN AND THE FEDERAL REPUBLIC OF NIGERIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

At the moment of signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains between the Kingdom of Sweden and the Federal Republic of Nigeria, the Contracting States have agreed that the following provisions shall form an integral part of the Agreement:

Article 5

1. It is agreed that if any agreement or convention between Nigeria and a member State of the Organisation for Economic Cooperation and Development (DECO) provides for a longer time period than any of those provided for in sub-paragraph (g) or (h) of paragraph 201 Article 5 (either generally or in respect of specific activities), such longer time period or periods shall automatically apply (either generally or in respect of specific activities) if a resident of Nigeria carries on any such activities in Sweden or if a resident of Sweden carries on any such activities in Nigeria, under the same conditions as if such longer time period or periods had been specified in those sub-paragraphs.
2. It is agreed that if in any agreement or convention between Nigeria and a member state of the Organisation for Economic Cooperation and Development (DECO) signed after the signing of this Agreement the word "delivery" is included in a provision or provisions corresponding to subparagraph (a) or sub-paragraph (b) of paragraph 3 of Article 5, or both sub-paragraphs, sub-paragraphs (a) and (b) of paragraph 3 of Article 5 of this Agreement shall automatically be applied as if the word "delivery" had been so included from the same time when the agreement or convention between Nigeria and the third state becomes effective.

Article 7

It is agreed that the provisions of sub-paragraphs (b) and (c) of paragraph 1 of Article 7 shall apply only where sales and business activities are effected directly by the enterprise in the other Contracting State through other outlets than the permanent establishment for the purpose of depleting the profits that would otherwise have been attributable to the permanent establishment and —

- (i) the profits of the permanent establishment are not determined on the basis of the total amount received by the enterprise, but are determined on the basis of the remuneration which it is expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions;
- (ii) the profits of such permanent establishment are not determined on the basis of the total amount of the contract, but are determined on the basis of that part of the contract which is effectively carried out by the permanent establishment.

Article 8

1. If the competent authorities of the Contracting States by mutual agreement conclude that profits are derived by a resident or residents of a Contracting State from the operation of ships or aircraft in international traffic to or from places in the other Contracting State and that such profits are not derived by a resident or residents of the other Contracting State from the operation of ships or aircraft in international traffic to or from places in the first-mentioned State, and that such situation has a permanent nature, then the condition of reciprocity envisaged in paragraph 1 of Article 8 for tax exemption is not met. In such case the tax charged shall not exceed 1 per cent of the earnings of the enterprise derived from the other Contracting State. For the purpose of the foregoing sentence, the term "earnings" means income derived by a resident of a Contracting State from the carriage of passengers, mail, livestock or goods boarded or loaded in the other Contracting State, less refunds and payments of wages and salaries of ground State and excluding income derived from the carriage of passengers, mail, livestock or goods which are brought to that other State solely for transshipments or transfers.
2. If any agreement or convention for the avoidance of double taxation, or protocol thereto, or any other international arrangement concluded after the date of the signing of this Agreement between Nigeria and a third State provides for rates of taxation (including nil rates) on the

profits derived from the operation of ships or aircraft in international traffic which are lower than the rate provided for under this Protocol, then the same lower rate shall apply under this Agreement and shall have effect from the latter of the dates of which this Agreement or the relevant convention, agreement, protocol or other international arrangement between Nigeria and a third state becomes effective.

Articles 10,11 and 12

In respect of paragraph 6 of Article 10, paragraph 8 of Article 11 and paragraph 7 of Article 12, it is agreed that when a Contracting State contemplates to deny benefits to a resident of the other Contracting State, the competent authorities should consult with each other.

It is agreed that if any agreement or convention between Nigeria and a member state of the Organisation for Economic Cooperation and Development (OECD) provides that Nigeria shall exempt from tax dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) arising in Nigeria, or limit the tax charged in Nigeria on such dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) to a rate lower than that provided for in sub-paragraph (a) of paragraph 2 of Article 10, paragraph 2 of Article 11 or paragraph 2 of Article 12 of the Agreement, such exemption or lower rate shall automatically apply to dividends, interest or royalties (either generally or in respect of those specific categories of dividends, interest or royalties) arising in Nigeria and beneficially owned by a resident of Sweden and dividends, interest or royalties (either generally or in respect of those specific categories of dividends, interest or royalties) arising in Sweden and beneficially owned by a resident of Nigeria, under the same conditions as if such exemption or lower rate had been specified in those sub-paragraphs or paragraphs.

In witness whereof the undersigned being duly authorised thereto have signed this Protocol.

Done at Stockholm, this 18th day of November, 2004, in duplicate in the English language.

(Signed)

FOR THE GOVERNMENT
OF THE KINGDOM OF
SWEDEN

(Signed)

FOR THE GOVERNMENT
OF FEDERAL REPUBLIC
OF NIGERIA (*Hon. Yakub Abiodun
Balogun — Lagos Island II Federal
Constituency*).

Question that the provisions of the Second Schedule stand part of the Bill — Agreed to.

Long Title:

A Bill for an Act to Provide for the Domestication and Enforcement in Nigeria of the Avoidance of Double Taxation Agreement Between the Federal Republic of Nigeria and the Kingdom of Sweden and for Related Matters (*Hon. Yakub Abiodun Balogun — Lagos Island II Federal Constituency*).

Agreed to.

Chairman to report Bill.

(HOUSE IN PLENARY)

Mr Deputy Speaker in the Chair, reported that the House in Committee of the Whole considered the Report of the Committee on Treaties, Protocols and Agreements on a Bill for an Act to Provide for the Domestication and Enforcement in Nigeria of the Avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Kingdom of Sweden and for Other Related Matters (HB. 443) and approved Clauses 1 - 3, the First and Second Schedules, and the Long Title of the Bill.

Question that the House do adopt the Report of the Committee of the Whole — Agreed to.

22. Adjournment

That the House do adjourn till Thursday, 17 November, 2016 at 11.00 a.m. (Hon. Femi Gbajabiamila — House Leader).

The House adjourned accordingly at 1.41 p.m.

Yussuff Sulaimon Lasun
Deputy Speaker