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**SENATE OF THE FEDERAL
REPUBLIC OF NIGERIA**

Tuesday, 24th May, 2016

The Senate met at 10.55 a.m.

PRAYERS

(The President in the Chair)

VOTES AND PROCEEDINGS

The President: Distinguished Senators, we have before us the Votes and Proceedings of Wednesday, 18th May, 2016 for approval. We will start consideration from page 717 to 726.

Senator David Umaru (Niger East): Mr. President, I move that the Votes and Proceedings of Wednesday, 18th May, 2016 be approved.

Senator Mao A. Ohuabunwa (Abia North): Mr. President, I second the Motion that the Votes and Proceedings of Wednesday, 18th May, 2016 be approved.

Question put and agreed to.

Resolved: That the Votes and Proceedings of Wednesday, 18th May, 2016 be approved.

CLOSED SESSION

Plenary Session Suspended: 11:01 a.m.

Plenary Session Resumed: 12:01 a.m.

The President: The Senate in the Closed Session deliberated on issues relating to the workings of the Senate and the National Assembly in general. Is this a true reflection of what transpired in the Closed Session?

Several Distinguished Senators: Yes.

ANNOUNCEMENTS

Appreciation letter from Senator Suleiman Adoke

The President: This is a letter from Senator Suleiman Adoke and it reads:

Your Excellency,

APPRECIATION

I, Senator Suleiman Adoke, on behalf of my family wish to express our sincere appreciation to the President of the Senate, Senator Abubakar Bukola Saraki, Deputy Senate President, Senator Ike Ekweremadu, the Principal officers and all distinguished Senators for the support and solidarity shown on my thanksgiving service on the 21st April, 2016.

I am highly honoured by your personal presence and representations, including prayers at the occasion. My joy knows no bound and may the Almighty God bless each and every one of you.

Yours sincerely,

(Signed)

Senator Suleiman Adoke

Birthdays

I wish to announce the birthday of the following Senators: Senator Rilwan Adesoji Akanbi, which was on the 6th May, 2016. We congratulate him for his birthday and wish him many happy years ahead.

The Deputy Senate President's birthday, this was on the 12th May, 2016. We congratulate him, and I think he is being humble not to announce it himself. It is my pleasure to announce it; we wish him many more years of service to this great country. I commend him also for being a gentleman. We wish him many more years ahead.

Senators Buruji Kashimu and Clifford Ordia both share the same birthday, 19th May, 2016. I congratulate them and wish them many more years of good health and success

Senator Yele Omogunwa, I also congratulate you and wish you many more happy years ahead.

Senator Mao Ohuabunwa's birthday is today, 24th May, 2016. I congratulate him and wish him many more years of good health and happiness.

NASS ICT Department

I wish to announce that the National Assembly ICT Department wish to inform the Senators that they have created the National Assembly official e-mail system and provided e-mail address accounts for Distinguished Senators. You should please contact the NASS ICT Department for further information.

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Visitors in the Gallery

I wish to acknowledge the presence of the members of the Crescent University Students, Abeokuta, Ogun State, and Staff and Students of Stoneville School, Gwarinpa, Abuja who are in the Gallery to observe Senate proceedings.

I wish them fruitful observation of the Senate proceedings.

PRESENTATION OF PUBLIC PETITION

Petition against Nigerian Communication Commission

Senator Dino Melaye (Kogi West): Mr. President, I have a petition from one of my constituents. He is asking for compassionate appeal over the termination of his employment by the Nigerian Communication Commission. There is no litigation over this petition and Peter Alabi Yakubu is asking the Senate to intervene.

If I have the permission of Mr. President, I want to lay the petition.

(Petition laid)

Petition against Port-Harcourt Distributions Network

Senator Bassey Albert Akpan (Akwa-Ibom North East): Mr. President, I have a petition against the Port-Harcourt Distributions Network on illegal and unjustifiable increase in electricity tariff without recourse to the rule passed by this National Assembly. The petitioner is seeking the leave of this Senate to enable it achieve and attain justice, there is no legal remedy sought.

(Petition laid)

(Petitions accordingly referred to the Senate Committee on Ethics and Privileges to report back in two weeks.)

PERSONAL EXPLANATION

Demise of Senator Shehu Sani's Mother and Senator Alasoadura's wife

Senator Bala Ibn Na'allah (Kebbi South): Mr. President, I am coming under Order 43 to sadly bring to the notice of the Distinguished Senators that over the weekend, distinguished Senator Shehu Sani lost his mother in Kaduna. Equally, distinguished Senator Alasoadura lost his wife over the weekend and the Senate President personally represented us.

I therefore urge that, in solidarity with our colleagues, we observe a minute silence in honour of the two departed souls.

The President: Distinguished Colleagues, the Deputy Leader has come under personal explanation. According to our Rules, there will be no further debate on it.

For the two issues, we have one of our Colleagues, Senator Alasoadura who unfortunately lost his wife last week but I, and the Leader led some of our distinguished colleagues on condolence visit on behalf of all of us. I know the funeral is coming up on Thursday and I have nominated the Chief Whip to represent us to convey our condolence to him. May the Almighty give him strength to bear the loss of his wife; may her soul rest in perfect peace.

We also have our Colleague, Senator Shehu Sani who lost his Mother. I was also able to convey our message to him. Senator Wammako is on his way to Kaduna to convey the message of all of us.

I would like us to rise and observe a minute silence for the two departed souls.

(One minute silence accordingly observed)

MATTER OF URGENT PUBLIC IMPORTANCE

Released Statistic by the Bureau for Statistic

Senator Albert Bassey Akpan: Mr. President, I wish to draw inspiration from our Order 42 - Matter of Urgent Public Importance - and Section 16 of the 1999 Constitution as amended. By the leave of the President, can I please read?

The President: Go ahead.

Senator Albert Bassey Akpan: I read Order 42:

The matter for discussion shall, if possible, be referred to the President of the senate before commencement of the day's sitting and the President of the Senate shall refuse to allow the claim unless he is satisfied that the matter is definite and urgent'.

Mr. President, Section 16 of the 1999 Constitution as amended states:

(1) The State shall within the context of the ideals and objectives for which provisions are made in this Constitution:

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- a) *Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy:*
- b) *Control the national economy in such a manner and to secure the maximum welfare, freedom and happiness of any citizen on the basis of social justice and equality of status and opportunities and it goes down Mr. President to the end'.*

Mr. President, I wish to draw the attention of this Chamber and the attention of my Colleagues as Senators of the Federal Republic of Nigeria to the recently released statistic on the states of the Nigeria economy by the Bureau for Statistic and as confirmed and corroborated by the Central Bank of Nigeria and the World Bank. I believe that as Senators, we owe this country a duty to ask the why, the when and what at any point in time.

As I speak with you Mr. President, the Central Bank of Nigeria on the monetary side has called for an emergency Monthly Policy Committee Meeting. Statistic has shown clearly that our dear economy has gone into full blown recession. Unemployment has increased, and no doubt, inflation has increased. Therefore, I believe by the leave of this Senate and Mr. President, I would want to seek the authority of this Senate that this Senate discuss this Matter of Urgent Public Importance within the shortest possible time.

The President: Distinguished Colleagues, according to our Rule Book, Senator Albert Bassey Akpan saw me on this issue of Matter of Urgent Public Importance to seek the leave of the Senators that this matter be stepped down over till the next legislative day.

Question put and agreed to

Resolved: That the matter be stood down till the next Legislative Day.

PRESENTATION OF BILLS

Senator Mohammed Ali Ndume (Borno South) Mr. President, the first Order of the Day is Presentation of five Bills. You may wish to invite the Clerk of the Senate to read the Short Titles of the Bills.

Nigerian Metallurgical Industry Bill, 2016 (SB.260)

Nigerian Metallurgical Industry Bill, 2016 (SB.260) – presented by Senator Theodore A. Orji (Abia Central); *read the First Time.*

Education (National Minimum Standards) and Establishment of Institutions Bill

Education (National Minimum Standards) and Establishment of Institutions Act CAP E3 LFN 2004 (Amendment) Bill, 2016 (SB.286) – presented by Senator Aliyu M. Wammako (Sokoto North); *read the First Time.*

Motor Vehicle third Party Insurance Act M22 LFN 2004 (Amendment) Bill, 2016

Motor Vehicle Third Party Insurance Act M22 LFN 2004 (Amendment) Bill, 2016 (SB.276) – presented by Senator Umaru Ibrahim Kurfi (Katsina Central); *read the First Time.*

Nigeria Industrial Development and Zones Commission (Est., etc.) Bill, 2016

Nigeria Industrial Development and Zones Commission (Est., etc.) Bill, 2016 (SB. 280) – presented by Senator Fatima Raji-Rasaki (Ekiti Central); *read the First Time.*

Institute of Chartered Biochemist and Molecular Biologist Bill, 2016 (SB.283)

Institute of Chartered Biochemist and Molecular Biologist Bill, 2016 (SB.283) – presented by Senator Emmanuel Paulker (Bayelsa Central); *read the First Time*

PRESENTATION OF REPORT

Report on the Bankruptcy and Insolvency Act Cap B2 LFN 2011 (Repeal and Re-enactment) Bill, 2016

Senator Mohammed Ali Ndume: Mr. President, the Sixth Business of the Day is Presentation of the Report of the Committee on Banking, Insurance and other Financial Institutions on the Bankruptcy and Insolvency Act Cap B2 LFN 2011 (Repeal and Re-enactment) Bill, 2016.

You may wish to invite Distinguished Senator Rafiu Adedayo, Chairman of the Committee to move the Motion for the Senate to receive the Report.

Senator Rafiu Adedayo Ibrahim (Kwara South): Mr. President, I move that the Senate do receive the Report of the Committee on Banking, Insurance and other Financial Institutions on the Bankruptcy and Insolvency Act Cap B2 LFN 2011 (Repeal and Re-enactment) Bill, 2016 (SB.09), to be laid accordingly.

Senator Stella Adaeze Oduah (Anambra North): Mr. President, I second the Motion.

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Question put and agreed to.

Report laid on the Table.

ORDERS OF THE DAY

CONSIDERATION OF BILLS

National Transport Commission Bill, 2016

A Bill for an Act to provide for the establishment of the National Transport Commission as Independent Multi-Modal Economic Regulator for the Transport Industry and for other Related Matters, 2016 (SB. 242) –

Order for Second Reading.

Senator Mohammed Ali Ndume: Mr President and my distinguished Colleagues, the first Order of the Day is the Second Reading of the Bill on the National Transport Commission Bill, 2016.

You will recall that the Bill was read the First Time in this Chamber on Thursday, 14th April, 2016. Mr President, you may wish to invite distinguished Senator Andy Uba to move the Motion for the Bill to be read the Second Time.

Question proposed.

Senator Andy Uba (Anambra South): Mr. President, I rise to lead the debate on National Transport Commission Bill which was read for the first time in this Chamber on the 14th April, 2016.

The Bill seeks to establish the National Transport Commission to regulate and co-ordinate activities of both public and private service providers in the transportation industry, in accordance with international best practices for the benefit of a wide spectrum of interest groups and stakeholders.

The transportation services sector in Nigeria has been largely uncoordinated and lacking in direction for decades. The somewhat chaotic business order which hitherto prevails in the sector has resulted in the perpetuation of all manner of violations and arbitrariness, which have manifested in several adverse effects on the national economy to wit, huge capital flights, collapse of industries, the rendering of poor quality services and blatant perpetuity of other unfair trade practices. The proposed National Transport Commission Bill is an instrument designed to establish the regulatory framework for the operation of the Nigerian Transport Sector, as an economic regulator.

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The main responsibility of the economic regulator in this industry would be to play a leading role in the transport regulatory reforms, nationally and to protect consumers of transport services by ensuring that services are fairly priced, available, reliable and safe. Economic regulation enhances the development of an efficient and service-oriented transportation system that meets the Nation's need.

Mr. President, Distinguished Colleagues, you would recall that this Bill was listed among the Frontline Bill Proposals at the recently concluded Inaugural National Assembly Business Environment Roundtable and was earmarked as one of the Bills which could contribute immensely to the ease of doing business in Nigeria. It is also instructive to note that countries like Canada, Australia and some States in the United States of America have established similar Transport Commissions to perform the roles stated above. Most other developed countries have one agency or the other performing such roles.

The core regulatory duties of this Commission focuses on a framework to ensure the promotion and protection of the principle of competitiveness in the transportation industry, whilst preventing the perpetuation of acts of monopolies, combines and other unfair trade practices by registered participants thereof.

To this end, the Commission is conferred with the powers of:

- (a) Standardizing tariff charges and other fees on transportation services rendered.
- (b) Monitoring operational standards with regards to equipage of infrastructure and facilities.
- (c) Encouraging and brokering public/private partnerships whilst also.
- (d) Leveraging a variety of incentives that would enhance the investment portfolios of the transportation sector.

The regulatory regime contemplated under this proposed Bill will ensure that the previous old commerce posture of the transportation industry is abated. By this Bill, we hope to put in place, a coordinated and uniform process of registration and licensing every stakeholder in the sector and obtaining annual returns on their activities. Difficulties or impediments encountered in individual or collective capacities and suggestions on improvements to be made to enhance efficiency.

In addition to the regulatory functions of the proposed Commission, the provisions of this Bill empowers it to enter concessionary and partnership agreements with duly registered service providers with regards to the running of certain facilities and infrastructure vested in the proposed Commission by law.

For the purposes of accomplishing the duties imposed on the proposed Commission under this Bill, a Directorate is established for each of the core aspects of the transportation sector and the proposed regulatory regime. They include the:

- Ports Administration,
- Marine Transportation,
- Legal Regulatory and Logistics Department,
- Finance and Commercial Departments and many others.

The mentioned core sectors and departments are to be headed and coordinated by seasoned and experienced members of the Board of Directors, appointed in consonance with the provisions of this Bill.

In order to ensure that the regulatory functions of the proposed Commission are performed in a most efficient, transparent, accountable and equitable manner, this proposed Bill confers appreciable autonomy and independence on the Commission in addition to its powers to make appointment, discipline its staff and carry on its operations without the control of any person or authority.

Furthermore, provisions are made for the establishment of zonal operational offices and such other branch offices, as the Board may consider necessary to enable proper and efficient application of the regulatory regime prescribed under this Bill.

Further still, the expenditure and other obligations of the Commission are to be defrayed from a Fund established under this Bill, while proper accounts and audit of the Fund and expenditure thereof are to be carried out annually in accordance with acknowledged practices in the Federation.

As earlier stated, in order to facilitate the performance of its duties with regards to the foregoing, the Commission is conferred with powers to register and license varied participants/service providers in the transportation sector upon payment of fees and charges to be determined from time to time by the Board. This power is interlaced with other incidental powers of renewal, suspension, revocation or cancellation of any licence issued in accordance with the rules and regulations set out under this proposed Law.

Other incidental and supplementary duties are imposed on the Commission under this Bill, which includes its powers of intervention and arbitration in dispute arising between service providers, concessionaries and consumers with regard to services rendered in relation to the provisions of the Bill. Other elaborate provisions are contained in the Bill, which touches on Dispute Resolution Mechanisms.

On the cost implication of this Bill, the Bill has no immediate cost implication, as it provides for the transmutation of Nigeria Shippers Council into the National Transport Commission, the latter necessarily inherits all the infrastructure and assets of the former, and the budgetary allocation to the Shippers Council shall be available to the Commission. There is therefore no extra cost to the Nation, by reason of the establishment of this Commission.

Mr. President, Distinguished Colleague, for emphasis and before I conclude this presentation, I wish to reiterate the aim of this Bill. The aim is to set up a regulatory body that would promote efficiency in the rendering of transportation services, in a bid to engender economic growth. Its purpose is to create a level playing field for all investors and participants, eliminating past inefficiencies within the transportation sector, and a birth of new business environment, where renewed zeal, vigour, spirit and a determination to succeed in the participants would be the norm.

A central body outside the Ministry is needed to develop and implement regulations and codes, financial as well as operational, to govern and guarantee effectiveness and efficiency in the sector. The Civil Service structure with its tendency for red tape has never been the ideal vehicle for driving dramatic populist change in a society like ours, which is desperately in need of development. This is why a Special Purpose Vehicle (SPV), responsible to the Ministry but not directly controlled by it, in the mould of this Commission, is better placed to make the desired and sustainable impact, in the shortest possible time in the sector.

Finally Mr. President, Distinguished Colleagues, I urge you to give your support to this Bill. While this is not the appropriate time to look back in reproach, it is most certainly the time to look forward to an era of prosperity for allied services and businesses in the transportation sector. Our support of the proposed Commission must necessarily result in the coordinated and easy movement of goods and services around the country, which must in turn, necessarily result in the economic development of this Nation.

The passage of this Bill will display the unflinching commitment of this Senate to lending critical thought and considered action, towards repositioning the Nigerian transport sector for the growing challenges of the 21st Century. I thank you for listening to me.

Senator Bala Ibn Na'allah: Mr. President, this Bill came at the most appropriate time in the development of our nation. The reason is that, while the contribution of the Transport Sector to Gross Domestic Product averages between 29 to 32 *per cent* in developed countries, in Nigeria, it is only two *per cent* - sadly though. The reason is because, like in the lead debate, my brother and friend, Senator Andy Uba said *un-coordinated*. The reason being that there is no government establishment under the Ministry of Transportation that has specifically taken it upon itself to look at the transportation need of Nigerians first and then plan along the line that those needs will be met with minimum investment and savings.

The resultant effect is that, today, while we cover a large expanse of land that we say is the Federal Republic of Nigeria; from independence to date, we have not been able to develop the Transport Sector in such a way that the country will benefit from it. I will give you one example. One particular airline in this country sold tickets worth ₦25 billion in one year. What it means is that, if we had structured our transportation system in such a way that we can compete with this particular airline, at least, we would have sold tickets worth ₦5 billion or more in that regard. That would have been an investment that is domiciled in the country, capable of providing jobs and capable of servicing the transport sector.

Today, if you want to go to Chad, which is our neighbour here by public transport, let us say by air, you will first of all go to Lomé, then to Mali with Alaska Air before coming back to Nigeria to go to Chad. We are not talking about Ghana. Only recently, Arik introduced direct flight to Ghana and some of the African countries.

Therefore, I think that this is the best opportunity that the Senate would take to support this Bill and expedite its passage into law and urge the Federal government to equally quickly constitute the board so that we can take advantage of this as quickly as possible. This is a very straight forward Bill in the sense that what it seeks to do is to domicile investment that hitherto should have been a Nigerian issue which we took outside the country.

Accordingly, I urge my Colleagues to support this Bill without further delay and allow it to go through Second Reading.

Senator Barnabas A. I. Gemade (Benue North East): Mr. President, I rise to contribute to the Second Reading of this Bill and agree with the last speaker that this Bill is coming at a very opportune time; at a time when the management of transportation as a whole in our country is pretty much confused and disorganised.

There are attempts by the Change government to bring the affairs of all modes of transportation into one ministry, Ministry of Transportation. It is one step in the direction of attempting to put things as squarely in perspective to ensure that the divergent development of transport management in the different aspects is coordinated into one.

When the Bill goes to the relevant committee for detailed legislative work, it will be important to look very closely to the contents and to ensure that all aspects of transportation are duly recognised and taken on board in all the regulatory activity. This is because the recommendation of this Bill is that the Nigerian Shippers Council should transmute into the Commission for Transport. As it is, it would need to have a tremendous amount of reform made to it because at the moment, the expertise available in the Shippers Council is limited to Marine Transportation, which is kind of restrictive. Even at that, the work of the Shippers Council has been quite restrictive and limited because we see that the moderation of Marine Transportation in Nigeria has remained extremely elusive. This is in the sense that a lot of that activity is still monopolised by foreign participants, and with all the laws being made in Nigeria, especially the Cabotage law, which was released many years ago, has not caused any effect whatsoever in the augmentation of Nigerian indigenous participation in Marine Transport.

Very big and major projects of river dredging have been done; the River Niger from Bayelsa to Baro has already been completed by the last administration spending billions of naira, but there is nobody really coordinating it. There is nobody really co-ordinating local ship owners' to take advantage of these facilities so that they can grow GDP in this sector of our economy.

Therefore, it is important to know that a Commission salvaged with its own capacity of moderating and coordinating in this sector, will be best suited to accelerate the development in the local content of transportation, and that is going to help a great deal in ensuring that we improve on the Nigerian economy especially in this sector.

Mr. President, without much ado, I support this Bill and I believe that during Second Reading, maybe a close scrutiny of it may even lead to the change of name. All the same, it is a Bill that is ought to be passed. I thank you for given me this opportunity.

Senator Barau I. Jibrin (Kano North): Mr. President, this Bill is very important because it has far-reaching effects, it touches on the areas of our transport system and the importance of having a robust and efficient transportation system is *sine qua non* to a sound economy. It is important to our economic development.

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Goods are moved from one place to another and also people are conveyed from one place to another every day. Therefore, it is important that we have a Commission as proposed by this Bill that will take care of our transportation system, and in making sure that we have a very reliable and efficient transportation system in this country, which will be at par with what is applicable in other parts of the world.

When you travel overseas, you will see how efficient transport is, even in some of the developing countries we visited, Egypt, Angola and the rest; they have sound transportation system. Why can we not have that in Nigeria? I believe that when we have this Commission as proposed, when we look at the lead debate, what is being talked about, if we have this Commission, it will go a long way in making sure that we have this kind of sound transport system. To this end, I support this Bill and I urge my Colleagues to support it so that it can be passed without any delay.

Senator Isiaka Adetunji Adeleke (Osun West): Mr. President, with serious overhaul of our transport sector, we need to accelerate the passage of this Bill. To underscore the importance of the NTC Bill, in 2014 during the National Conference, it was discussed very well. The Bill seeks to ensure fair accommodation of the operators and competitors and also ensure efficiency in the service provisions of the operators.

I want to ask that we should look at the issue of transmutation of Nigerian Shippers Council into the Nigerian Transport Commission, because we want to look at the law establishing the Shippers Council and other Councils there. Now that you are asking that the National Transport Commission inherits the infrastructure and assets of the Shippers Council, during the Second Reading, we should look at those laws to ensure that there is no conflict.

The President: I want to thank Senator Andy Uba for this important Bill. This is one of our priority Bills. If you can recollect in our Legislative Agenda on which we all agreed to move ahead, there is no doubt, as we discussed and some of us have contributed, that for us to move and stimulate our economy, we must get our transport sector right.

This Bill has come as a result of the engagement we had with the private sector that has come to us to tell us which are the laws they need in order to move this economy forward. This Bill is urgent and we need to fast-track the process because there is no economic power that does not have efficient transport system. In line with that, I want to thank those who have contributed and when the Bill gets to the Senate Committee on Aviation, Land and Marine, they will ensure a speedy work, and when it comes back to us, we will ensure that we fast-track this so that this Bill is passed into law.

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(Bill read the Second Time and referred to the Joint Committee on Land, Marine, and Aviation and to be led by Land Transport; it should report back in four (4) weeks)

Sexual Harassment in Tertiary Educational Institutions Prohibition Bill, 2016

Senator Bala Ibn Na'allah: Mr. President, the Second Order of the Day is the Second Reading of the Sexual Harassment Bill in our Tertiary Institutions, 2016. You will recall that the Bill was read the First Time in this Chamber on Wednesday, 4th May, 2016.

You may wish to invite Senator Ovie Augustine Omo-Agege to move the Motion for the Bill to be read the second time.

Question proposed.

Senator Ovie Augustine Omo-Agege (Delta Central): Mr. President and distinguished Colleagues of this 8th Senate of the Federal Republic of Nigeria, we are definitely committed to our constitutional duty of promoting our shared values and legislating for the well-being of our people. I humbly present this lead debate for the Second Reading of the Sexual Harassment in Tertiary Educational Institutions Prohibition Bill, 2016, SB 262.

I must first thank the Co-Sponsors and supporters of this Bill for their patriotic convictions and leadership on the issue of sexual harassment in our tertiary institutions. I address you today, not just as a law maker, but also as a father of three adorable daughters, two of whom are university students. I am also sure that you have daughters or relations in tertiary institutions.

Sexual harassment in our campuses is a vice that brazenly challenges our values as a nation and for far too long, sexual predators, masquerading as educators have plied the corridors of our nation's higher institutions unchecked. This 8th Senate is, by this Bill, sending a very strong message that enough is enough; that never again would our students be left at the mercy of the few sexual predators in our tertiary institutions. Nigerian students want us to act, and now is the time to strengthen our laws against sexual harassment and compel heads of higher institutions to act to protect the victims.

With this Bill, we are refusing to abdicate our role as leaders in the face of repugnant threats to our shared values. This Bill is an assurance to all that when we send our daughters, nieces and wives to these schools, our educators will be their mentors, motivators and actually act as guardians on our behalf.

The Student-Educator Fiduciary Relationship:

Mr. President, the teacher's role in society's quest for greatness is so fundamental that the student-educator relationship is in that unique class of parenting. It is a fiduciary relationship of authority, dependency and trust where the educator, like a good parent, exercises supervisory responsibilities over the student. It mirrors the legal doctrine of *loco parentis* which places protective parent-like responsibilities on educators over students.

The student-educator relationship is formed on a code of absolute honour and obligation of good faith, honesty, dignity, and care to be held inviolable. An educator with predatory sex desires is unfit for *loco parentis* purposes. This special relationship has produced for us eminent leaders like Dr. Nnamdi Azikiwe – an educator at the Lincoln University, Pennsylvania; Sir Ahmadu Bello – an educator at then Sokoto Middle School; Sir Abubakar Tafawa Balewa – an educator at then Bauchi Middle School; and Sir Chief Obafemi Awolowo – an educator at Abeokuta before moving to Wesley College, Ibadan. These are heroes; they were not sexual predators. They were ethically sound and dignified educators who inspired new generations to dream nobly, break glass ceilings, and sustain national development.

An educator with uncontrollable sexual desires should not be allowed to exercise fiduciary authority, particularly in the student-educator relationship because of the enormous power they wield over their students. Sadly, the reverse is the case in our tertiary institutions.

The Mischief:

On November 27, 1988, the *Sunday Tribune* in an editorial stated that:

Sexual harassment is rampant in all Nigerian institutions of higher learning. In some places, it has almost become an accepted fact that the female student must submit.

In 2013, the National Universities Commission (NUC) agreed that:

Of over 50 corruptions perpetuated in our universities, Sexual harassment seems to rank extremely very high among corrupt practices uncovered in our Universities.

In 2014, the International Journal of Applied Psychology noted that:

In Nigeria, sex for grades in the tertiary institutions is a reality and the male lecturers in particular, perceive themselves as thin gods and such unprofessional behaviour can be perpetuated unchecked.

Recently, a writer noted that:

Our campuses of supposed higher learning are more or less veritable sexual jungles where academic staff, especially, but also senior administration staff, are prowling predators. Sex for marks or other favours has become so entrenched as to have acquired the status of a law of nature. Put bluntly, it is as if our university, polytechnic and college of education campuses are sex colonies where rape or any other form of coerced copulation and intimacy may be practised without sanctions. - Vanguard.

Clearly, this is an extraordinary mischief. Surely, the Nigerian people are disgusted by the observed culture of sex for marks or other favours in tertiary institutions. Yet here we are, 28 years after, nothing has been done to arrest this mischief. As a consequence, more and more of our children, nieces, cousins and even wives have become victims.

Mr. President, had we acted earlier, a respected married woman seated in the gallery watching us right now, would not have spent six (6) years, instead of four (4) years of study for standing her ground against a sexual predator in the University of Lagos.

Had we acted earlier, Miss Shola, an intelligent student of University of Ibadan (as reported by Vanguard) would not have been scored 40 marks instead of the 60 marks she believes she deserves just for being bold enough to reject the advances of her lecturer.

Had we acted earlier, Hamzat Kaothar of the University of Abuja would not have had extra years in the University. So too is Chinelo Emenike of the Imo State University (as reported by Premium Times), whose Head of Department failed to act to protect her when she reported her ordeal in the hands of her Lecturer.

The victims' ordeals are too many and too repulsive to recant. So I am going to quote a writer:

The ungovernable libido of lecturers has led to some harried female students resorting to desperate means of looking sexually unappealing or putting themselves within the assumed safe bounds of moral and social norms.

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Such as wearing wedding bands even though unmarried; strapping cushion to their bellies to feign pregnancy; foregoing a bath, dressing down and shunning make-up before office visits; pleading the monthly visitation, etc. all to no avail. Always, the sex-obsessed lecturer wielding his illegitimate power asks drily: Do you want to pass this course to graduate, or not "Vanguard"

Mr. President, this is so repugnant! Yet there are no clear sanctions against the menace and crime. As noted by Dr. Adekunle Idris, Chairman of ASUU, in the Lagos State University:

The truth of the matter is for now we do not have specific guidance in respect to sanctions. What we are doing is to continually sensitise our members in terms of seminars, in terms of talking to one another to ensure that best practices are always adhered to during all our activities. It is only a matter of moral suasion we are having for now, "Premium Times".

Mr. President, I humbly submit that where there is a mischief bedevilling the citizens, the Legislator cannot be indifference, or go to sleep. As Legislators, we owe it as a duty to protect the people with parliamentary authority and good conscience. The draftsman must write a new law. And we must do that now.

The species of brazen sexual predatorship being unleashed on our students is a very serious crime. We cannot leave it to *suasion at seminars and conferences*. This Bill will replace that *suasion* with a tough law and raise the bar of ethical conduct and discipline in our learning environment in line with global best practices.

I believe the strongest and most effective way to reduce the menace of sexual harassment in our tertiary institutions is to make it easier to prosecute offenders. In order to do that, we must penalise impropriety of the act with or without consent by making consent clean material once the act is established.

Only recently in 2015, the Dean Faculty of Law, University of Calabar, was alleged to have set a one hour test for students on a Saturday, assigning two lecturers to supervise. About twenty eight minutes to the end of the allotted time, the said Dean, entered the hall and ordered the students to stop writing. While the students were preparing to submit their answer sheets, the Dean approached the victim, tore her answer sheets and left the shreds on her seat. The girl picked up the pieces and kept them in her bag. However, as she was leaving, the Dean accosted her again and asked if she still had the shredded script.

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He then instructed her to follow him to the general Dean's office to re-copy the answers on another plain sheet. The unsuspected girl followed him to the Dean's general office where two other persons were, but the Dean further instructed her to follow him to his private office so that she could comfortably use the table. On entering the Dean's office, he locked the door, concealed the key and started making sexual advances to the student, promising to help her pass the test. He subdued her and had carnal knowledge of her. The Dean claimed, as defence that the sex was consensual, the victim reported otherwise, "*Vanguard*".

Under our codes, a victim's informed and voluntary consent ought to be a defence to a charge of rape. But in both the Criminal and Penal Codes, consent is not defence where the victim is a minor; this is statutory rape for which strict liability attaches. The very act proves the crime. Just like the minor, a student is vulnerable in the student-educator relationship of authority, dependency and trust. If a predator exploits this vulnerability and takes sexual advantage, that reprehensible act itself must be penalised with or without consent, as there cannot be informed and voluntary consent by a student held hostage by the official authority of an educator who is a predator. This is the strongest and most effective way to reduce the menace of sexual harassment in our tertiary institutions.

By removing mutual consent between a student and educator as a defence, this Bill, when enacted into law would make such an act a statutory rape or a strict liability offence, thus offering better protection to students and making it easier to prosecute offenders.

The Bill has 20 Sections; Sections 1 and 2 are on Citation and definition of terms respectively. Section 3 is on the Relationship of Trust between an educator and a student. Offences constituting sexual harassment under the Bill are articulated in Section 4. Marriage is a defence under Section 5. Under Section 6, it is not a defence that a student consented to any offence in Section 4. Sections 7, 8, 9, 10, 11 and 12 are respectively on commencement of criminal proceedings, penalty, and civil action for an educator's breach of fiduciary duty, institutional discipline measures and institutional disciplinary procedure. Section 13 is on judicial review decisions taken by an institution. Sections 14 and 15 spell the criminal liability of an administrative head as defined under the Bill where there is failure to address sexual harassment complaints as contemplated under the law. Sections 16, 17 and 18 are concerned with liability on a student for false complaint. Sections 19 and 20 make provisions for the protection of students from victimization under any guise.

Some advocates have suggested the extension of this Bill to cover primary and secondary schools. My passion says 'yes' but knowing that strict penal liability already attaches to sexual harassment of minors in primary and secondary schools in our extant laws, I must subject my passion to the law. There is also a suggestion that maybe we should just bring this Bill as an amendment to a Sexual Offences Bill sponsored by Senator Chris Anyanwu and passed by the 7th Senate. As good as the suggestion may sound, the fact is, the Senator Anyanwu Bill did not receive Presidential assent and therefore it cannot be amended.

Mr. President, it is equally impossible to add the non-controversial provisions of the Senator Anyanwu Bill are covered by extant laws in their original statutory domains (criminal and penal codes). It is also not necessary to extend this Bill to cover similar fiduciary relationships especially priest-congregant, employer-employee, father-daughter, and warder-prisoner because the criminal and Penal Codes already adequately deal with these categories with sufficient clarity.

On suggestions of inadequate sanctions for students who falsely accuse educators of sexual harassment, the reality is that this Bill prescribes expulsion for those students. In addition, an educator whose character is maligned is at liberty to sue for defamation under the law of defamation which is well-settled in our jurisprudence and needs no duplication in this Bill.

A few think that this Bill may abridge the 'Right to Private and Family Life' enshrined in Section 37 of the 1999 Constitution (as amended). This is not correct because Section 45(1) of the Constitution expressly states that:

- (a) Nothing in Sections 37, 38, 39 and 40 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society;
- (b) For the purpose of protecting the rights and freedom of other persons.

This Bill is therefore founded on strong Constitutional wicket to cure the specific troubling mischief of sexual harassment of students in tertiary institutions.

There is also the suggestion that the female students harass the educators by their mode of dressing and that this Bill is not doing enough to protect the educators. I understand this concern. However, the educator can activate institutional disciplinary actions against any student predator. What is more, a student pays a price for saying no to a predator's demand for sexual favours, whereas the reverse is the case if a student were to harass an educator. The educator pays no price for saying no to the student.

Our students are the real victims here and they need our protection. The reality is that in other jurisdictions where students dress more indecently and provocatively and laws exist to forbid student-educator relationships, the students are not sexually harassed as is the case with our tertiary institutions.

In the United States of America, under the Honour Code, Title 7 of the Civil Rights Act of 1964 and Title 9 of the Higher Education Amendments Act of 1972, the University system is against sexual harassment of students by faculty members. As a signpost, Harvard University declares that:

No faculty member, instructor, teaching assistant, teaching fellow, researcher, tutor, graduate student, or undergraduate course assistant, shall request or accept sexual favours from, or engage in a romantic or sexual relationship with, any student, including a graduate student.

For Yale University, sexual harassment is an affront to human dignity and fundamentally at odds with the values of Yale University. Sexual harassment is a violation of Federal and State laws.

In the United Kingdom, the 603 years old St. Andrews University, Scotland affirms that there is a danger that such relationships exploit the relationship of authority and trust that is inherent in the relationship between members of Staff and Students. In Australia (Queensland), the law forbids the student-educator sexual relationship. In South Africa, under Section 17 of the Employment of educators Act 1998 (as amended), it is an offence for an educator to have a sexual relationship with a student. That educator will face serious sanctions under the law.

Even leading academics agree with us that this Bill is a necessity. In the words of the President of the American University of Nigeria (AUN), Dr. Margee Ensign:

I am glad this is finally happening in Nigeria and I cannot imagine anyone would be opposed to this legislation, I think it is a defining moment for Nigerians and I am proud of the many senators who co-sponsor the new legislation. I call on all Vice Chancellors to join us at the AUN and lobby for the passage of this Bill, Premium Times.

May Ensign's voice of reason remind us that the history of this 8th Senate would endure in human conscience as we pass this Bill into law for all families and true believers in the nobility of the teaching profession?

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In compliance with Order 77(3) of our Standing Rules, I state that this Bill has no financial implications. Accordingly, there is no accompanying financial compendium. For the greater good of our Republic, I hereby humbly move for the Second Reading of this Bill to be taken.

The President: Thank you Senator Ovie Omo-Agege, I am sure a lot of people want to contribute. I will try and regulate it because Senator Ovie Omo-Agege has covered all the areas.

Senator Biodun Olujimi (Ekiti South): Mr. President, let me also thank Senator Ovie Omo-Agege for this timely intervention and because of that, I stand to second the Motion.

Sexual harassment is very rampant in our Tertiary Institutions. Let me also say that it cuts across and it is beyond tertiary institutions. We have noticed that even banks employed women as baits to get bankable funds and that has been a problem for the society.

Right now, sexual offence is part of the corruption we are talking about. This Bill, even though a bit narrow, needs to be broadened when it gets to the Committee level. We need to bring into it all shades of opinion from all facets of life because we must stand up for our girls. Our girls cannot be harassed at will and we are also going to use this Bill to ensure that even the girls are also cautioned in harassing the men. We have found several situations whereby girls have also been a source of frustration for the lecturers and for the people who educate them.

With this Mr. President, I second this Motion and I ask my Distinguished Colleagues to do so. Thank you very much.

Senator Theodore Ahamefule Orji (Abia Central): Mr. President, it is a pleasure to at least contribute to this debate, and I feel that this is a debate where all elders should contribute. It is not for young people whose libido can be compared to that of universities Lecturers. I am on the basis that I am elder and I have to contribute. This is a Bill that needs automatic passage not going to Committee level because of the research distinguished Senator Ovie Omo-Agege has done to bring up this Bill.

Your Excellency, we come from different backgrounds and you know that in our different localities, we have an attitude towards sex. It is a secret something that people respects from time immemorial. But today, these brands of university lecturers have turned this culture away and they have brought in their own culture which is sexual harassment using exams and other things as a basis for doing that.

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I believe that this Bill, when passed into law, will not only bring sanity to the University environment but would also deal with this people who indulge in this type of malpractice. In a very typical university, there are different types of girls. You have the old, young, married, unmarried, ugly and beautiful one; they are all there and these lecturers and university workers, some of them do not have the bravados. When they see these girls outside, especially the beautiful ones, they do not have the bravado to talk to them and say hello. They cannot chase them, and because of that, they now hide in the university premises to use exams to harass these people to submission, which is unpardonable. We do not accept that.

It does not stop there; there is even homosexual acts going on there by some of these lecturers in the universities. If it happens in fear, if you investigate you will see. Therefore, I believe that this Bill will do a very good job in curtailing this; if it may not stop it, it would, at least, curtail this situation that we have in our different universities.

On that note, Your Excellency, I do not want to go on and on because Ovie Omo-Agege has done a very good job there. All I need to do is to support and say I stand up to support as an elder and father. I stand to support this Motion.

Senator Dino Melaye: Mr. President, I celebrate the intellectual sagacity of Senator Ovie Omo-Agege for bringing this Motion at this very auspicious time. Why this Bill? Why should we have laws that take care of sexual harassment, rape and others in the Penal Code? This Bill is important to separate this from our existing laws because of the prevailing, outrageously calamitous situations in our Campuses.

There is no gainsaying that the abuse by lecturers and even academic staff in our higher institutions is becoming unbecoming. Mr. President, I support wholeheartedly that this Bill be enacted to check and serve as deterrent to this lecturers who take advantage of the vulnerability of our undergraduates to abuse our sisters and daughters.

Sexual harassment is two-way traffic with the provocative and seductive dressing of our students who take advantage to compromise weak lecturers and men should also be discouraged in all our campuses. The seductive and provocative dressings into offices of lecturers to seduce them and not all of them have the anointing for resistance.

Schools should also have minimum dressing standards; this will also help. There should also be a dress code which will also help to reduce the harassment the other way round or the temptation as the case may be. I have seen ladies write letters to lecturers and saying, *I am ready to do anything to pass this course*. If we do not discourage such; then we will also promote this.

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Finally, disciplinary actions should be taken on our campuses against lecturers who find themselves in this situation. Most times, when a student harasses a lecturer, the student face disciplinary action, but when it is a lecturer harassing a student, it is usually dismissed even at the Senate level of our higher institutions of learning. But if lecturers are being punished and seen to be punished for these offences and not only punished but publicity is given to this very satanic behaviour, it will help to curtail, ameliorate and palliate the situation.

Senator Binta Masi Garba (Adamawa North): Mr. President, I will align my voice to applaud the mover of this Motion even in the process of the format of the Bill.

What I had wanted to say, the two other speakers had made mentioned. As a woman and as a mother and virtually all of us here are fathers to girls, husbands to wives and brothers to sisters, obviously, no one will want to see that either of those aforementioned will be a victim of sexual harassment. Like what the last speaker has said, the dressing code of some of these girls need to be checkmated. Some girls are very lazy and dull; obviously, they want to use that as a weapon to get some certain leverage from their lecturers. But I would have appreciated this Mover if not only we restrict ourselves to the tertiary institutions but obviously, we should look at even the secondary schools where obviously we have been seeing sexual harassment. The latest was that of the Queen College, which is within the competent court of jurisdiction to look into the matter.

In the banking industry and financial institutions too, we should look into them because the sexual harassment cannot only be within tertiary institutions - but even here, Sir! Some couple of months ago, in one of the dailies, a lady was sexually harassed in the National Assembly, and so, we have to look at all areas of its ramification to see how sexual harassment will be dealt with accordingly.

Again, we need to look into the Penal Code and Criminal Code to reappraise to see what can be done with regard to the rape, sexual harassment, including cases involving the minors so that we can have a comprehensive legislation that will cover all.

Today, I was discussing with one of our Colleagues on a lighter note, sometimes in our discussion, we normally kind of shield our children and look at other people children as a prey. But we must look at every child out there, as a girl, to see that that child or that girl is protected against all the vices that are standing before them. The educators too must be checked even in the campuses. So on this, I rest my case. Thank you very much.

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Senator Stella Adaeze Oduah (Anambra North): Mr President. I want to thank my Colleague, Senator Omo-Agege for this Bill. My heart bleeds for these girls. As usual, the victims of these particular crimes; who are they? They are young girls and women. What we have not come to realise is the fact that when a girl is harassed sexually, you have ruined her life. We are just decorating what we call these lecturers, they are paedophiliacs - they harass, they molest and they kill the spirit of these girls. They snatch them from their cradle; that is a moral crime and it is unforgivable.

We can say that these girls dressed provocatively, for God's sake, these are kids and so they dress. Why are you looking? Look the other way and tell her to dress properly or send her out of the class. It is because it suits them, which is why they allow it. I seriously believe there is a conspiracy amongst men to allow this to continue. But I think we should all encourage accelerated passage of this Bill for sanity sake and for the sake of morality. There is no other way to paint it, there is nothing like provocation, there is no justification, we should call it what it is. These are thieves - they steal innocent girls' life; that is what they do, and so I am in total support of this Bill.

In furtherance to that, there should be a database that should consist of names of all these molesters so that when they molest in one school, no other school should allow them to teach so that they can feel the impact of what they are doing to these girls. This is not a laughing matter, this is a very serious Bill and we must treat it accordingly. I strongly support this Bill.

Senator Yahaya Abdullahi (Kebbi North): Mr. President, I rise to support this Bill but with a caveat. Sexual harassment knows no boundary; sexual harassment is sexual harassment whether it is committed in the universities, offices, or in the Senate. Therefore, if we are going to make a law, it is not proper for us to target that law to a particular segment of the society simply because that society's case is open while others may be closed.

I have been a teacher in the University. I have headed a Department as a Dean. As a teacher for over 20 years, therefore, I have a very good experience about what happens in the universities. To be candid, the most important thing, if we are going to do this, is to make sure that we put all these into the code of conduct within the laws of existing universities and make sure that those laws and regulations are enforced. If there is a failure of enforcement, we can find means within the university and within the laws of the land. I know that there are sections of certain laws of this country where this kind of thing is punishable.

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But to be very serious, to make a law targeting a particular segment of the society is too much; it is discriminatory. It means that we have to go and make specific laws for different segments of the society and that is going to be very belabouring the Senate and the enforcement arm of the government.

Therefore, if we are going to make a law to ban sexual harassment, we should do it across board. It should affect everybody, every office and every area of social endeavour. To isolate it to the university community and make a specific laws for it without making a similar law to cover the rest of the society, I think it is a mark of discrimination. I rest my case.

The President: Is there anybody against this Bill?

Several Distinguished Senators: No!

The President: Distinguished Colleagues, I want to join others to thank Senator Ovie Omo-Agege for this Bill and for the lead debate which was very thorough and well researched. Clearly, the message coming out of the Senate by this Bill and those who have spoken is that we must stamp out sexual harassment in our tertiary institutions. It is not what our society should be part of, it is something that we must get rid of and I think we must send a strong message out. The strong message must be that consent in this aspect is totally not acceptable.

I think this Bill is important and as fathers, we all have daughters, sisters and wives. There is nobody who has not had this kind of incident, or has not been affected in one way or the other. We must have tough laws that make it easier to prosecute offenders as opposed to making it more difficult to prosecute offenders. So, we will ensure that this Bill is fast-tracked and referred to the appropriate committee and hopefully, they will come back quickly with it so that we can actually pass it into law.

Question put and agreed to.

(Bill read the Second Time and referred to the Committee on Judiciary, Human Rights and Legal Matters to report back within four (4) weeks.)

PRESENTATION OF REPORTS

Report on Import Duty Waivers, Concessions and Grants

Senator Bala Ibn Na'allah: Mr. President, the third Order of the Day is the consideration of the Report of the Ad-Hoc Committee on Import Duty Waivers, Concessions and Grants.

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You will recall that the Report of the Committee was laid on Wednesday, 11th November 2015. You may wish to invite Senator Adamu Aliero to move the Motion for the Senate to consider the Report of the Committee.

Senator Muhammad Adamu Aliero (Kebbi Central): Mr. President, I move that the Report of the Ad-Hoc Committee on Import Duty Waivers, Concessions and Grants on the indiscriminate use and abuse of Waivers be considered by the Senate.

Senator Paulker Izibefien Emmanuel (Bayelsa Central): Mr. President, I rise to support the Motion that the report be considered by the Senate.

Question put and agreed to.

Question proposed.

Senator Muhammad Adamu Aliero: Mr. President, Distinguished Colleagues, this is our Report.

Preamble:

The Senate of the Federal Republic of Nigeria at its Plenary Session on Thursday, July 30, 2015; deliberated a Motion on *Indiscriminate Use and Abuse of Waivers for Rice Importation* and resolved to constitute an Ad-Hoc Committee of the Senate to look into all waivers, concessions and grants and carry out a holistic review to determine the full recovery of all Government revenue related to those policies S/Res/009/01/15.

The Motion came on the heels of recent public outcry on the gross abuses of waivers which had affected not only the expected outcome of encouraging investments but also become a conduit pipe to drain and divert to private pockets revenues due to the Government. The abuses of waivers and tax concession have done great damage to the national economy by undermining economic policy and the import duty system thereby distorting the economic system.

Recently, the media had been awash with reports on abuses of rice quota leading to the sealing of business premises of some rice importers by the Nigeria Customs Service in a bid to recover over ₦23.6 billion owed to the Government by four rice importers (*The Sun* of August 4, 2015).

Members of the Committee:

Senator Muhammad A. Aliero - Chairman

Senator Bareehu Gbenga Ashafa - Member

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Senator John Owan Enoh	-	Member
Senator Sabo Mohammed	-	Member
Senator Rafiu A. Ibrahim	-	Member
Senator Danjuma La'ah	-	Member
Senator Gershon Bassey	-	Member
Senator Donald Alasoadura	-	Member
Senator Albert Bassey Akpan	-	Member
Senator Isa H. Misau	-	Member
Senator Sam O. Egwu	-	Member
Senator Danladi S. Abubakar	-	Member
Senator Stella A. Oduah	-	Member

Secretariat:

Mr. Victor Efiong	-	Committee Clerk
Uche U. Uche	-	Asst. Committee Clerk

Terms of Reference:

The Committee in pursuit of further legislative action as directed by the Senate is to look into all waivers, concessions and grants and carry out a holistic review to determine the full recovery of all Government revenues related to these policies.

Methodology:

In the course of this assignment, the committee adopted various approaches in order to ensure fair hearing and wide representation of stakeholders.

- (i) Committee meetings;
- (ii) Request for relevant information from ministries, department and agencies of the Government;
- (iii) Call for Memoranda on three daily newspapers (*This Day*, *The Sun* and *Daily Trust* of September 3, 2015);
- (iv) Investigative Hearings with stakeholders;
- (v) Interactive sessions;

- (vi) Public Hearing;
- (vii) Fact-finding visits;
- (viii) Set a time frame of 2011-2015 for the assignment;

Attendance:

The following officials were in attendance during the four day investigative hearing:

- DCG A. A. Adewuyi representing CG - NCS
- DCG Jibrin M.
- DCG Musa Uba
- A. S. Adeleke – DSS
- Bassey James – DSS
- Aliyu Yahaya Gusau – DG, Budget Office of the Federation
- Wole Kolawole
- Olubunmi O. Siyanbola (Mrs)
- Ken Onwumbiko
- Victor Omata
- Adeshina Mary Okon
- Ibrahim Yusuf Mallari
- Azeez Musibau Olumuyiwa – Fed. Min. of Agric & Rural Dev.
- Fowler Tunde – Executive Chairman, FIRS
- A. J. Bamidele
- Q. S. Seghosime
- Aina Abiodun
- A. O. Amoman
- Amos Y. Sakaba
- James O. Ebutse

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- Benjamin Ikheloah
- Mohammed Baba
- Adewale Bakare
- Bala Bello
- Babagana Imam
- Ahmad Isa Ghondi- DG, National Automotive Design & Dev. Council
- Luqman Mamudu
- Adepoju S. A.
- Toyin Durowaiye – Manufacturers Association of Nigeria
- Okpe Sunday A.
- Engr. Charles C. Ugwu – Ebony Agro Ind. Ltd
- Andy Ekwelem
- Salmanu Saminu Faskari – Fed. Min. of Ind., Trade & Investments
- D. H. Mohammed
- Dr. Francis O. Alaneme
- Aliyu S. Abdullahi
- Engr. Battah Y. Ndiripaya
- Ben Iyeh
- Adewale Bakare
- Onuorah C. Francis
- Fajimi Ejiniyi Alaba
- Hon. Mohammed Abubakar – Rice Processors Association of Nigeria
- Joseph Tsavsar
- Barr. Anachuna Henry Izu

In this report:

- (i) The Ad-hoc Committee had 16 sittings;
- (ii) During which the following Ministries, Departments and Agencies (MDAs) and other stakeholders appeared before it:
 - (a) Budget Office of the Federation
 - (b) Nigeria Customs Service
 - (c) Federal Ministry of Agriculture and Rural Development
 - (d) Federal Ministry of Industry, Trade and Investments
 - (e) Nigeria Investment Promotion Council
 - (f) Nigeria Export Promotion Council
 - (g) Federal Inland Revenue Service (FIRS)
 - (h) National Automotive Design and Development Council
 - (i) National Sugar Development Council
 - (j) Rice Millers and Processors Association of Nigeria
 - (k) Manufacturers Association of Nigeria (MAN)
 - (l) Olam International Limited
 - (m) Milan Group
 - (n) Stallion Group
 - (o) Ebony Agro
 - (p) Tara Agro
 - (q) Meditarion Nigeria Limited
 - (r) Wacot Limited
- (iii) The Committee visited the under-listed companies:
 - (i) Ebony Agro Industries Limited, Ikwo, Ebonyi State

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- (ii) Anambra Motor Manufacturing Company Limited (ANAMMCO), Enugu, Enugu State
- (iii) General Appliances Limited, Egede -Udi, Enugu State
- (iv) Sunshine Hotels & Guest House Ltd, Enugu, Enugu State
- (v) Stallion Motors/ VON Automobile Nig. Ltd, Badagry Expressway, Lagos
- (vi) Dana Motors Limited, Isolo - Lagos
- (vii) Coscharis Motors Limited, km 32 Lekki-Epe Expressway, Lagos
- (viii) Globe Motors Nigeria Limited, Victoria Island - Lagos
- (ix) SCOA Motors Nig. Limited, Isolo - Lagos
- (x) Dangote Sugar Refinery, Apapa Port, Lagos
- (xi) Bua Sugar Refinery, Tincan Island, Lagos
- (xii) Milan Rice Mill, Imota – Ikorodu, Lagos

Presentations by Ministries, Departments and Agencies and Other Stakeholders:

Budget Office of the Federation:

Sequel to the growing need to diversify the revenue base of the Federal Government from oil vis-à-vis the desire to attract robust investments to ginger the under-developed sectors of the economy, the government embarked on deliberate fiscal policy measures to achieve its laudable objectives. The fiscal policy measures are aimed at providing financial incentives, by way of import duty exemptions on the importation of capital goods: machinery, equipment and spare parts, to prospective investors.

Apart from the oil and gas sector, Nigeria is endowed with numerous other natural resources that have the potential to contribute significantly to the gross domestic product (GDP), provide employment opportunities to the unemployed improve the nation's balance of trade position and douse the tension associated with the demand for foreign exchange.

Consequent upon a careful study and a cost-benefit analysis of the anticipated real benefits accruable to the nation's economy, provisions to attract investments in key sectors were made in the Common External Tariff (CET) 2008 – 2012 to tap the prospective inherent benefits.

Furthermore, upon the review and recommendations of the Tariff Review Board, the then Honourable Minister of Finance recommended and Mr. President approved specific fiscal policy measures aimed at growing the economy. In effect, the measures exempt investors from payment of import duty on the importation of capital goods – machinery, equipment and spare parts in the following key sectors of the economy.

- (i) Agriculture
- (ii) Aviation
- (iii) Mines and Steel
- (iv) Gas (upstream and downstream)
- (v) Power
- (vi) Defence /Security
- (vii) Diplomatic goods
- (viii) Others: Health, multilateral institutions assisted intervention projects, donated goods to NGOs, FBOs, etc.

Distinguished Senators may please note that the Presidential approvals were conveyed by the Honourable Minister of Finance vide Annexes I, II & III to the relevant authorities for implementation. Similarly, a highlight of existing statutes guiding the issuance of import duty exemption is contained in pages 2 – 3 of Annexure IV as attached. This information is opened to the investing public; the incentives are sector based and non-discriminatory. Attached, as Annex V, is the summary of the exemptions/waivers granted on the basis of above stated sectors.

Other than the goods specified in the aforementioned fiscal policy measures circulars and Act No. 16 of 1997, all the items contained in Schedule 2 of the ECOWAS Common External Tariff 2008 – 2012 are also exempted from payment of import duty (extracts are attached as Annexes VI & VII respectively, for ease of reference, please). Similarly, Mr. President is vested with discretionary powers under part 1 item 11 of the ECOWAS Common External Tariff (2008 – 2012), to impose, vary or remove any duty, levy and to amend the schedule.

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The remarkable successes being recorded in the agricultural sector, the growing interest and massive private investments in power generation (wind power, solar, hydro and gas to power); increase in cement production (culminating in its export) and the upsurge in mineral revenue are largely due to the fiscal incentives put in place by the Federal government. It may be noted that based on the commitment of the government and the provisions of the policy instruments, the statutes in force and the confidence of accessing the incentives, investors placed international purchase orders for the importation of plant, machinery and equipment and spare parts for their projects.

Consequent upon this development and these subsisting provisions of the Act and the Fiscal Policy Measures, the exemption/waivers in the identified sectors no doubt, offer the following benefits:

- (i) Local production capacities of the beneficiaries are enhanced;
- (ii) Reduction in gas flaring;
- (iii) Employment opportunities are generated;
- (iv) Power generation will be increased as a result of private investments and participation; and
- (v) Free medical, human and other social services are provided by NGOs, especially to the vulnerable in the rural areas.

Processing and Issuance of Import Duty Exemption Certificate (IDEC):

Based on the knowledge of the provisions of the Act, extant policy circulars and the discretionary powers of Mr. President, prospective investors applied to the Honourable Minister of Finance for consideration and approval for import duty exemptions, accordingly. The Revenue Department, Budget Office of the Federation is mandated to process and recommend or otherwise through the Director-General to the Honourable Minister of Finance for consideration and approval as may be appropriate.

However, any other irregular requests for import duty exemption that are not captured in the above-mentioned authorities and which are usually for items that are on the import prohibition list such as furniture, (furnished and unfurnished, polished etc.), building materials (steel and iron materials), armoured vehicles (outside of security sector), raw materials (billet), poultry items, fabric materials, rubber plastics (dust bin), etc. are referred by the Presidency to the Honourable Minister of Finance for advice.

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In some cases, based on importance and merit such requests are recommended for presidential consideration.

Upon due consideration and approval by the Honourable Minister of Finance, the Director (Revenue) is usually directed to convey the approval to the applicants, through the issuance of the IDEC. The certificate is copied to the Comptroller General, Nigeria Customs Service and the Governor, Central Bank of Nigeria for appropriate action.

Although, the fiscal policy measures circular states that items imported under the policy attracts zero (%) duty, the investors are obliged to make formal requests for the exemptions. The application is being processed, while the goods are being shipped. The objective of this is to enable government maintain a record of how much it concedes as incentives to attract investment in the target sectors and to update the national statistics.

Distinguished Senators may wish to note that, in line with existing protocol, statutes and mandate, the processing and granting of import duty exemptions to investors in identified/target sectors as at now, fall within the purview of the Ministry of Finance. This is in line with the powers delegated by the President vide letter Ref. No. PRES/87 dated 27th May, 2008 (copy attached as Annex VIII, for ease of reference, please).

The fiscal policy measures Circular and the Acts are still in force, therefore, it is imperative that investors continue to benefit from these incentives, until the Act and Fiscal Policies are repealed or amended. These incentives are critical to boosting investors' confidence and perhaps the major factors in their decision to invest in Nigeria.

NIGERIA CUSTOMS SERVICE:

Below table is the summary of presentation by the Nigeria Customs Service on Import Duty Waivers/Concessions and Grants.

CIF VALUE & REVENUE CONCEDED FOR THE PERIOD: YEAR 2011 – AUGUST, 2015

S/N O	YEAR	CIF VALUE	REVENUE CONCEDED	REMARK S
1.	2011	1,082,161,05 2,457.26	78,489,941,114.74	
2.	2012	1,304,713,10 1,622.71	128,538,453,758.99	
3.	2013	539,593,159, 492.30	46,056,265,355.78	

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4.	2014	833,152,146,29 2.34	87,654,744,360.22	
5.	2015	1,185,379,524,5 46.07	106,711,892,098.1 4	
TOTAL		4,944,998,984,4 10.68	447,451,296,687.8 7	

LIST OF IMPORTER SHOWING THE LEVEL OF
UTILIZATION OF RICE IMPORT QUOTA
ALLOCATION AS AT 12/8/2015

S/ N	IMPORTE R	TOTAL ANNUAL ALLOCATI ON (mt)	IMPORT ED QTY (mt) as at 12/08/15	OUTSTAND ING ALLOCATI ON (mt)	QTY EXCEED ED (mt)
1.	OLAM	133,963.00	283,432.5	-	149,469.5 1
2.	DANGOTE	115,204.00	40,112.0	75,092.0 0	-
3.	UMZA INTER.	85,207.00	85,207.00	-	-
4.	STALLIO N/ POPULAR FOODS	89,939.00	619,456.3	-	529,517.3 3
5.	GOLDEN PENNY (FMN)	91,887.00	11,072.3	80,814.7 3	-
6.	MIKAP	82,897.00	82,897.00	-	-
7.	WACOT	84,934.00	33,066.0	51,868.0 0	-
8.	KEREKSU K FARMS	74,299.00	75,000.0	-	-
9.	HONEYW ELL	67,966.00	-	67,966.0	-
10.	ELEPHAN T GROUP	61,770.00	58,420.0	3,350.00	-
11.	ELEPHAN T GROUP/JN I CONCESSI ON	100,000.00	16,048.0	83,952.0 0	-
12.	LABANA RICE MILL	37,500.00	15,042.0	22,458.0 0	-
13.	JMK FOODS	46,787.00	34,789.4	11,997.6 2	-
14.	STINE RICE MILLS	30,000.00	-	30,000.0 0	-
15.	AA IBRAHIM	38,138.00	-	38,138.0 0	-
16.	BUA/IRS RICE MILL	144,107.00	144,107.0 0	-	-

17.	MILAN LTD	27,537.00	72,178.2	-	44,64 1.19
18.	TARA AGRO	21,000.00	-	21,00 0.00	-
19.	EBONY AGRO	15,000.00	25,070.0	-	10,07 0.00
20.	ATAFI RICE IND.	15,000.00	15,039.8	-	-
21.	ASHI FOODS	12,500.00	5,500.0	7,000.00	-
22.	JAI	10,523.00	10,532.0	-	-
23.	AREWA RICE MILL	7,500.00	7,520.4	-	-
24.	ONYX RICE MILL	6,000.00	2,487.3	3,512. 75	-
25.	BANSAR A RICE, NEAR OGOJA	5,000.00	-	5,000. 00	-
26.	DANMOD I	5,000.00	-	5,000. 00	-
27.	KLYSAT	25,000.00	-	25,00 0.00	-
	GRAND TOTAL	1,434,658.0 0	1,639,968. 1	532,1 49.10	733,6 98.03

Federal Ministry of Agriculture and Rural Development:

In line with the Distinguished Senator's request for information covering years 2011-2015, I wish to add that no information were available for year 2011-2013 as the Rice Import Quota Allocation Policy took effect from 2014 sequel to the introduction of the New Rice Policy by Government.

It would however be recalled that the harmonized tariff policy (10 per cent duty and 100 per cent levy) introduced on the importation of husked brown rice and polished/finished rice with effect from 1st January, 2013 was put in place with the over-arching objective of facilitating Nigeria's attainment of self-sufficiency in rice production in line with the Agricultural Transformation Agenda (ATA) of the former administration. This became necessary because of the huge import bill Nigeria was incurring on the importation of rice – a commodity that the country has favourable climatic and agronomic conditions to produce on commercial scale.

Nevertheless, the introduction of the tariff policy had its positive results as well as challenges. The positive result include elimination of fraudulent activities of some rice importers, significant increase in local rice production and milling capacity and job creation. While the challenges are increase in rice smuggling from neighbouring countries, and sharp drop in customs revenue derived from rice importation affecting overall revenue collection by the Nigeria Customs Service in 2013.

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Following this experience, the harmonized tariff on rice importation was reviewed while ensuring that Nigeria remains on track in its drive to achieve self-sufficiency in rice production and at the same time addressing the challenges arising thereof. These among others had heralded the new quota policy of 2014 by the Government following the recommendations of all stakeholders in the Rice Value Chain.

Under the new Rice Policy put in place to encourage investment in the Rice Value Chain in the country through backward integration, an import duty differential on importation of rice (brown rice/finished rice) was introduced between investor in the Rice value chain and rice traders. Investors with rice milling capacity with verifiable backward integration were to enjoy 10 *per cent* import duty and 20 *per cent* levy (which is also comparable to rates applicable in the neighbouring countries, especially Benin Republic). Rice importers/traders were to pay 10 *per cent* import duty and 60 *per cent* levy. Under the new Rice policy, importation of brown/polished or finished rice by inter-ministerial Committee chaired by the Federal Ministry of Agriculture and Rural Development information on Rice Import Quota approved by the Ministry is applicable for 2014 only as the quota allocation for 2015 was cancelled and subsequently withdrawn from beneficiaries. While the Ministry highly commends the positive effort being put in place by your esteemed Committee to determine full recovery of all Government revenue related to these policies.

National Sugar Development Council:

The National Sugar Development Council (NSDC) was established by Decree 88 of 1998(Act CAP 78 LFN.2004), now an amended Act of the National Assembly, (Annexes 1 and 2) to catalyse the development of sugar industry. Its major mandate is to articulate policies and programmes that would harness Nigeria's abundant natural resources to ensure we attain self-sufficiency in domestic sugar requirement within the shortest possible frame. In response to your call for submissions on 2011-2015, the NSDC submits as follows:

Sugar Sub-Sector before the Nigeria Sugar Master Plan (NSMP):

Section 6 (1) of the law that establishes NSDC provides for the establishment and maintenance of a

Fund which shall be applied towards the promotion of the objectives for which the Council is established. S

Sub-section (6)(2)(a) states:

There shall be established pursuant to (1) of this Section: (a) ten percent surcharge on sugar imports.

This is the genesis of the sugar Levy. The 10 *per cent* levy was in operation from 1994 until 2000 when, with the establishment of the first sugar refinery in Nigeria, government decided to waive the payment of the levy for raw sugar imports as an incentive to get the refineries deploy savings from the concession to sugarcane-to-sugar production under a Backward Integration Programme (BIP). They were required to pay duties on the imports as only the levy was waived. The first Refinery was soon joined by another and both enjoyed the levy waiver up to the approval of the NSMP in 2012. The NSMP stipulated a regime of graduated tariff comprising duties and levies from 2010-2020 with levy ranging from 10-80 *per cent*

Sugar Sub-Sector Policy: Nigeria Sugar Master Plan (NSMP):

The Nigeria Sugar Master Plan (NSMP), whose implementation commenced in January 2013, is the sectoral policy for the transformation of the sugar industry in Nigeria. The NSMP provides fiscal framework, investor-specific incentives and investment protection strategies to ensure the attainment of the goal of self-sufficiency in local sugar production in ten years.

Concession for Raw Sugar Imports for the Sugar Refining Sub-Sector:

At the unveiling of the NSMP in November, 2012, the industrial end-users had raised concerns on the likely impact of the NSMP Tariff regime on local sugar prices. In response to these concerns and in a bid to combat smuggling, Federal Government approved a Transitional Concessionary Tariff of five *per cent* Import Duty and five *per cent* Sugar Levy for three years, effective 1st January, 2013 - 31st December, 2015 for Sugar imports for the Refineries which had signed-on to the Backward Integration programme (BIP). Consequently, the Federal Ministry of Finance issued the **2013 Fiscal Policy Measures – An Addendum (Ref. No. BD/FP/AM/18/1/270/ of 3rd May, 2013).**

The “Fiscal Policy Measures for the Development of the Nigerian Sugar Development Master Plan”, Ref”. No. BD/FP/TT/42/J/1/325 of 2nd May, 2014 and

Re: Approval for the Implementation of the ECOWAS common External Tariff (CET) 2015-2019 and 2015 Fiscal Policy Clarifications” Ref. No BD/FP/DO/76/I/182 of 29th July, 2015;

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- All of which reaffirmed the concession.(Annexes 3, 4,& 5). The concessionary tariff replaced the NSMP prescribed tariff for raw sugar of
- 0 per cent Import Duty, 50 per cent Levy for 2013; 0 per cent Import Duty, 70 per cent Levy for 2014 – 2015,
- Since the period under your purview is from 2011 – 2015, and the implementation of the NSMP began in January, 2013; it means the refineries only enjoyed the full levy waiver for two years (2011 – 2012) under the period covered by your AD-hoc Committee's review. The estimated value of the levy waived was about ₦17.41billion, for the two years.

Two Refineries benefited from that levy waiver. They are;

- (i) Dangote Sugar Refinery, Apapa; Lagos established in 2000; and
- (ii) BUA Sugar Refinery, Tin Can Port, Lagos established in 2008.

The third Refinery, Golden Sugar Company, Apapa-Lagos came on stream in December 2012 and did not benefit from the waiver. Under the NMSP, the value of the five per cent levy paid so far by the refineries from January, 2013 – June, 2015 amounts to ₦10.67 Billion.

Economic Impact of Concession:

The concession has the following economic effects:

- Stabilised sugar prices for industrial and domestic consumers 2013 -2015;
- Stifled smuggling in the same period.
- Incentivised Refineries in the implementation of the BIP plans signed on to with government.

In the considered view of the NSDC therefore, the concession had valuable benefits. The Sugar Council is already holding consultations with relevant agencies on the tariff or raw sugar as from 1st January, 2016 and has proposed a regime of 10 per cent Duty and 10 per cent Levy, which we believe would have minimal effect on domestic sugar prices and at the same time send a clear message to raw sugar importers to show more commitment to local production and quickly reduce their dependence on imports and thereby avoid paying higher tariffs.

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Ban on the Importation of Sugar in Retail Packs:

It is necessary to use this platform to inform your honourable Ad-hoc Committee about the issue of the ban on sugar in retail packs, as is currently also done for retail packs of fruits juices, noodles, vegetable oils, bagged cement, etc. This is one of the Investor-Specific Fiscal Incentives prescribed in the NSMP. However, one company, Messrs. Meditarion Nigeria Limited (affiliate of Messrs. Milan Group), the sole importer of St Louis Refined Sugar in Nigeria, has persistently been flouting this ban. Shortly after the ban came into effect, the company was granted an Exemption by the Federal Ministry of Finance vide

Exemption on cube sugar prohibition for 18,385MT only "Ref. No BD/FP/TT/42/M/1/419 of 29th July, 2013. (Annex 6).

The packaged Sugar Producers Association of Nigeria (PSPAN) protested against this Exemption in view of the impact on its members' investment in Vitamin A fortification, cubing and packaging facilities and the fact that if was granted against the extant policy of granting such Exemption only to sectors! The availability of the banned refined sugar brand in our markets/retail outlets still persists despite the fact that the company had exhausted the quantity specified in the exemption letter (18,385MT) since April, 2014; according to figures obtained from French Customs Service (Annex 7).

Conclusions:

The Sugar Council wishes to express its appreciation to your honourable Ad-hoc committee for beaming its search light on this important issue through which huge sums of revenue had been reportedly lost. We wish to reiterate however, that sugar, as a commodity, had not suffered from import duty waivers. There was only sugar levy waiver which however had since 2013 been reverted albeit that raw sugar imports still enjoy significant concession, the impact of which has been beneficial to the sugar sub-sector so far. The initial transition concession will end in December, 2015 after which we propose to raise the tariff to 10 per cent Duty and 10 per cent Levy.

Federal Inland Revenue Service (FIRS):

Federal Inland Revenue Service is the primary revenue generating agency of the Federal Government with the mandate to assess, collect and account for taxes due to the Federation.

In the discharge of this mandate FIRS administers Federal tax laws and collects the taxes due under those laws, which include Companies Income Tax, Petroleum Profits Tax, Value Added Tax, Tertiary Education Tax, Capital Gains Tax, Stamp Duty and Personal Income Tax within the Federal Capital Territory.

The administration of import duty waivers, concessions and grants is not within the purview of the functions of FIRS. Import duty waivers are granted and administered by the Federal Ministry of Finance and the Nigeria Customs Service. FIRS does not therefore have any role in the grant or implementation of the waivers and only receives waiver circulars issued by the Federal Ministry of Finance from time to time.

Nigerian Investment Promotion Commission:

Over the past two decades, most countries have been actively promoting their countries as investment locations to attract scarce private capital, associated technology and managerial skills in order to help achieve their developmental goals. They have increasingly adopted measures to facilitate the entry of foreign direct investment (FDI). Some of such measures include liberalising the laws and regulations for the admission and establishment of foreign investment projects; providing guarantees for repatriation of investments and profits; and establishing mechanisms for the settlement of investment disputes. Tax Incentives constitute a very significant aspect of Investment promotion strategies.

Tax Incentives are fiscal measures designed by Governments to support and encourage Industries (Companies) in a country to overcome start – up challenges, grow its operations and capacities, lower the tax burdens, direct investments into growth – drive areas (sectors) of the economy, ensure technological transfer and possible diversification programmes etc. Other incentives commonly used in attracting and encouraging FDI inflow into a country include;

- Export Incentives,
- Specially designated Industrial Parks, Export Processing Zones, Free Trade Zones etc.,
- Trade Credits and Allowances for R & D,
- Capital (Investment) Allowance/Tax Credit,,
- Reduced Tax Rates, and
- Duty/VAT Exemptions and Reductions.

The argument for a robust tax holiday regime continues to engender healthy debates on its desirability or otherwise, its relevance and impact on the growth of businesses and investments in a country vis-a-vis, Government's continuing efforts towards boosting its revenue profile. On one end of the debate is the need for Government to enhance/secure its revenue generation options against the backdrop of dwindling revenue inflows. The need for more revenue is usually made against the backdrop that one of the key responsibilities of government is to provide critical infrastructure (roads, rails, ports, water, power/electricity etc.) needed to facilitate economic and commercial activities which would ultimately drive growth and economic development of a country.

At the other end of the debate is the role that a robust tax holiday incentive regime could play in engendering healthy and strong companies whose products/services are globally competitive, thereby growing their profitability and resultant enhanced capacity to pay higher tax on a sustainable basis. A healthy company would obviously be in a position to remit to Government, all its tax liabilities and commitments (VAT, Education Tax, With-holding), thereby ultimately boosting government revenues, as well as making funds available to undertake developmental plans.

In Nigeria, the primary incentive used in attracting, encouraging and supporting investments is the Pioneer Status (Tax Holiday) Incentive. "Pioneer Status" is a generic term used globally to connote tax holiday incentive.

However, its definition and objectives needs to be put in proper perspective.

What is Pioneer Status?

The Industrial Development (Income Tax Relief) Act, 1970, the Principal Legislation on subject, defines Pioneer Status as:

Industries, Sectors, Products or Services "not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria, or there are favourable prospects of further development in Nigeria of any industry"; and "if it is expedient in the public interest to encourage the development or establishment of any industry in Nigeria...."

The two key issues to consider as regards the definition of Pioneer Status are;

- Is the activity, product/service or Industry being carried out in Nigeria on a scale suitable for the economic requirements of the country?

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- Is it in the public/national interest to promote a particular Industry, Sector, Product/or service?

As a derivative of the law, the NIPC's working definition of Pioneer Status is that:

Pioneer is a fiscal concession designed by Government and backed by Law, to encourage and promote certain targeted Industries, Activities, products and services, identified by Government as "Priority Areas" and "Growth drivers" of the economy.

There are currently, a total of 71 activities approved by Government and listed in the official Approved Schedule as eligible activities, products and services qualified to benefit from tax holiday. The law allows for a maximum five year tax holiday period for eligible/beneficiary companies, and three years only for those engaged in furniture making and textiles.

The List is subject to periodic review, to ensure that sectors considered "matured", are delisted, while new sectors/industries or activities considered "Priority" and "Growth – Drivers" of the economy, as defined by current Government policy focus, are included.

The NIPC Act also provides for "Special Incentive" which may convey tax holiday period beyond the statutorily approved five years, in collaboration with relevant Government Agencies.

Currently, the Commission is working with the Federal Ministries of Health and Education, to ensure that incentives are provided for investments in these sectors, given the strategic importance of the sector.

Also, the Federal Government had cause to grant "Negotiated Incentive" based on negotiations with some key investors/strategic investments. This incentive was by way of tax holiday for longer period beyond what is statutorily provided for by the Industrial Development Act of 1971. Some of the recipients include;

- The LNG Project, Onne (10 years),
- Intel Services Limited (7 years),
- Global Scansystems Limited (7 years), and
- Cotechna Services Limited (7 years).

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It should also be pointed out that some countries grant up to 15 years tax holiday. Ghana, for example, grants 12 years tax holiday to beneficiary companies, India – 15 years, Malaysia 10 years, Bangladesh 12 years and Cote D' Voire – 11 years, Singapore 8-years.

Pioneer Status (Tax Holiday) Incentive is administered by the Commission (NIPC) in collaboration with the Industrial Inspectorate Department (IID), Federal Ministry of Industry, Trade & Investment (to certify the effective date of commencement of the tax holiday); and the Federal Inland Revenue Services (FIRS) as the implementing Agency.

Why Grant Pioneer Status?

As earlier highlighted, Pioneer Status is a Tax Incentive to support Industries to grow in Nigeria.

Incentives are government schemes aimed at stimulating private sector interest in specified types of capital expenditure or investment in areas of high unemployment or backwardness. These incentives may take the form of direct subsidies or corporate income tax credits that compensates the investors for their capital cost (Source: Business Dictionary).

Nigeria continues to suffer the consequences of inadequate and weak infrastructure which in turn contributes largely to an uncompetitive business/investment environment, especially for companies operating in the country.

Until such a time when Nigeria's stock of infrastructure would have sufficiently improved and be considered adequate to support growth of industrial and economic activities, tax holiday incentive such as Pioneer Status, will continue to be desirable and necessary to enable companies to survive, grow, thrive and be globally competitive.

Projects in some key sectors of the economy are by their very nature, configuration, model and characteristics considered to be capital intensive, complex and with very long gestation periods in terms of completion period and Return on Investments (ROIs). Such sectors including Power, Rail, Marginal Field Operations, Transport Infrastructure, Gas, Petrochemicals etc., need to be supported, and the Pioneer Status (tax holiday) incentive has been a veritable tool of support in recent times, to enable projects in these Industries to grow on a sustainable basis.

There was also the need for Government to reverse the negative trend of foreign exchange expenditures on goods that could be produced locally, encourage the utilization of local raw materials and industrial inputs sourced within Nigeria, boost employment generation and encourage technology transfer/acquisition by companies operating in the country. Pioneer Status has become a useful tool towards achieving this objective. This has not only proved to be successful with verifiable and clear examples in the local economy, but has facilitated the production of a varied number of goods and services within the local economy in recent times that were hitherto being produced or sourced abroad.

In summary, the Pioneer Status (tax holiday) incentive as operated in Nigeria, serves to encourage investments (companies) to thrive, by allowing such beneficiary companies to overcome start-up challenges associated with Nigeria's poor infrastructure, encourage competitiveness, by way of boosting production (operational) capacities of such companies, while facilitating re-investment, diversification and exports by such companies etc.

Policy and Legal Framework:

The Federal Government policy objective for the grant of Pioneer Status is as follows;

- (a) To encourage the inflow of local and Foreign Direct Investment (FDI) into the economy.
- (b) To encourage the establishment and sustenance of investments that have favourable prospects of further development and diversification.
- (c) To promote Import-Substitution industrialisation by promoting local production, diversification and export of goods for the purpose of reducing capital flight.
- (d) To encourage investments in growth sectors that are considered strategic and of high priority as well as those with high employment potentials.
- (e) To assist new companies survive the initial challenges associated with business start-up; sustain growth of their operations and to remain profitable against any unfavourable business climate.
- (f) To rescue ailing industries from total collapse to prosperity.
- (g) To encourage technology transfer and value addition in all productive activities.

Legal Framework:

Administration of Pioneer Status in Nigeria is guided by the following Legislation;

- Industrial Development (Income Tax Relief) Act (IDA) 1971, otherwise known as CAP 179 LFN, 1990
- Industrial Development (Tax Relief Act), CAP 17, LFN 2004.
- Companies Income Tax Act
- Nigerian Investment Promotion Commission Act, 1995.

Legal Basis for Pioneer Status:

The law governing the operations of the Pioneer Status was first laid out under the Aid to Pioneer Industries Ordinance No.10 of 1952. This was repealed by the industrial Development (Income Tax Relief) Ordinance No.8 of 1958. This Ordinance was subsequently repealed by the Industrial Development (Income Tax Relief) Act 1971, otherwise known as CAP 179 LFN, 1990; and further re-enforced by the Industrial Development (Tax Relief Act), CAP 17, LFN 2004.

The Industrial Development Coordination Committee (IDCC) Act 36 of 1988, which was established to administer Pioneer Status Incentive, was effectively repealed by the Nigerian Investment Promotion Act No.16 of 1995.

The Commission therefore, derives its power to administer the incentive on the basis of its legal framework. Some of the key features in the Legal Framework include;

- (a) *The Powers to declare an Industry, Sector, Product or Service, "Pioneer" lies with the President and exercised by the NIPC as provided for in its Act (i.e. NIPC Act, 1995 etc.)*
- (b) *An application may be made under this section for any industry or product as "Pioneer".*
- (c) *The President may from time to time, on any ground which appears to it sufficient, amend the list of Pioneer Industries and Pioneer Products.*

Eligibility for Pioneer Status:

A company applying for Pioneer Status must be incorporated in Nigeria with a minimum share capital of ₦10.0million, and be registered by the NIPC as a necessary step towards accessing the Pioneer Status Incentive.

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Its activity or project for which it seeks Pioneer for must be an activity, product or service listed in the extant (Approved) Pioneer Schedule/List. There are 71 of such activities, products or services approved by Government. (See Annex A as attached).

Benefits of Pioneer Status:

The benefits of Pioneer Status:

- (i) Confers on the beneficiary company, tax holiday status which allows such companies to enjoy 100 *per cent* tax waiver for periods ranging between three – five years, thereby ensuring profitability and growth; and facilitating possible expansion/diversification programmes by such beneficiaries;
- (ii) Enhances survival and consolidation of business entities that would enable them contribute significantly to future revenue for Nigeria;
- (iii) Is used as catalyst for the development of identified strategic and priority sectors of the economy and growth drivers of the economy;
- (iv) Increases the global competitiveness of Nigeria in the attraction and retention of local and foreign investments;
- (v) Helps in mitigating challenges associated with business start – ups and sustainability of businesses;
- (vi) Encourages the development of new products/services, business expansions and diversifications;
- (vii) Supports investment negotiation and can be used as bargaining chip to entice reluctant investors in investment location decisions in favour of Nigeria;
- (viii) Sends the right signal to investors that government is interested and supportive of their businesses; and
- (ix) Provides critical inputs to the policy advocacy role of the Commission and government.

Some of the key benefits arising from the Tax holiday (Pioneer Status Regime), can be clearly seen and demonstrated by the robust developments of such sectors as Cement, Iron and Steel, Telecommunications, Noodles Manufacturing, Fruit Juice Production, Petrochemicals, Paper Pulp and related products manufacturing, the Marginal Oil Field producers who are mainly indigenous companies and in recent times, the Automobile Industry.

Some of the success stories in these sectors include Messrs Dangote Cement Plc, Lafarge Cement Group, Honeywell Group, Bua Cement Group, Unicem Plc, Ashaka Cement in the Cement sub – sector.

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In the Iron and Steel sector are Messrs Wempco Group, Aarti Steel, African Steel Mills Limited, Amiou Steel Limited, Monarch Steel Limited, Dana Steel etc.

The Eleme Petrochemical Company Limited a beneficiary of Pioneer Status is a good example of how Pioneer Status can serve as a catalyst for the turn - around of a formerly owned government company that was moribund for years. Following privatisation, the company was acquired by the Indorama Group of Indonesia, who had spent over ₦60 billion as at 2013 in rehabilitating the plant. The plant had since gone into full production and another fertilizer and petrochemical plant is under construction at the estimated cost of ₦16.5 billion by this same group.

The example of the Innoson Group of Companies is also a good example and clear demonstration of the potentials an indigenous company can attain when supported with tax holiday. This company is not only producing cars, buses, trucks and SUVs, but had since diversified into other key production areas as automobile components, plastics and building materials. Its investment portfolio for its car Manufacturing Line alone as at 2013 when it was granted Pioneer status was estimated at over ₦4 billion.

Pioneer Status as a Strategic Investment Promoter:

Contrary to the widely held beliefs and concerns expressed in a number of quarters that Pioneer Status deprives government of much needed revenue, clear evidences abound in the local economy that it is very much the reverse.

Pioneer Status rather enables the beneficiary company or project to grow, thrive, expand, diversify and even export etc. Such companies who would obviously become healthy in terms of their revenue stream, profitability and maintaining healthy Balance Sheets, would then be in a position to meet all their tax obligations including VAT, Education Tax, and Royalties for Oil & Gas, and Mining Companies etc. during the Pioneer period, thereby contributing greatly to the revenue profile of all strata of government.

The Liquefied Natural Gas (LNG) Project is a good example of how Pioneer Status can serve as a catalyst for attracting, negotiating and securing strategic investments for the benefit of the economy. The LNG Project located in Bonny Island, Rivers State, is a multi-billion Dollar Investment by the Federal Government and some foreign oil majors in a Joint – Venture arrangement. It has generated some \$85 billion from exports of liquefied natural gas since inception 15 years ago. The Project recently paid \$1.6 billion to the government as tax which will help address the current cash crunch being experienced by the Federal Government.

LNG negotiated and obtained a 10 years tax holiday which assisted it in its development of Train (Production Units) seven (7) which is its latest and is currently being constructed. It is expected to add additional production capacity of 30 million metric tonnes of liquefied natural gas, while generating over 18,000 direct jobs. Its impact on the economy in terms of employment generation, exports, technology transfer, and revenue generation etc is massive!

Pioneer Status as a Growth – Driver:

Pioneer Status has contributed massively to the current success achieved in the ICT/Telecommunications' sector, Agro – processing (especially rice milling, cash crops, cereals etc.), the Marginal Oil Field operators who are mainly indigenous companies.

The contribution from the indigenous companies to the 2.5 million barrels per day was only three *per cent*, but in recent years following divestments of fields (assets) by the IOCs and acquisition of same by such local companies as Seplat, Niger Delta Petroleum Development Company, Nestoil, Britannia – U, Platform Petroleum and a host of other Nigerian players currently in production, the contribution to national production levels has increased to 10 *per cent* as they currently contribute an average of 120,000 – 150,000 barrels per day from its 20,000 bpd pre-pioneer. Pioneer Status continues to serve as a catalyst for the development of certain sectors of the economy.

Pioneer Status as a Revenue Generation scheme:

Pioneer Status allows companies to save from tax holiday and such savings are expected to be ploughed back to the business. This ensures profitability and the maintenance of healthy Balance Sheets. Such companies would then be in a position to meet all their tax obligations including VAT, Education Tax, and Royalties etc. thereby contributing to the revenue stream of government even during the period of the pioneer.

Pioneer Beneficiary Companies in the Last Four Years (2011 – 2015):

The Commission had granted a total of **439** companies' Pioneer Status incentive, since inception in year 1999 (Attached as Annex B, is a Sectoral breakdown of the Approvals). However, for the period being requested by the Senate Committee (i.e. 2011 to date), a total of **154** companies were granted Pioneer Status with **54** companies from the Manufacturing Sector representing **34.39 per cent** of the beneficiaries. The total FDI inflow from beneficiaries was **\$543.44m** representing 45.42 *per cent* of the total FDI inflow into the economy.

Total employment generation recorded during the period was **45,083** with the **Manufacturing sector** accounting for **13,029 jobs** generated and representing **28.44%** of all jobs created during the period under review (Attached as Annex C is a Sectoral breakdown of beneficiaries of Pioneer Status for the period under review).

Steps to Accessing Pioneer Status by Applicant Companies:

Contrary to misrepresentations on Pioneer Status to the effect that it is a “Bonanza”, NIPC has put in place a very rigorous process but very transparent and predictable for Applicant companies to access the Pioneer Status. They are as follows;

Step 1

- Purchase NIPC Form II (Pioneer Application Form) by raising bank draft of ~~N~~200,000 in favour of NIPC and with the NIPC receipt, collect relevant Form from the Department of Investment Facilitation & Incentive Administration, NIPC. Form can also be downloaded from the NIPC Website for free.
- Submit duly completed Form II and the following support document by addressing the application to the Executive Secretary, NIPC;
 - Certificate of Incorporation,
 - Memorandum and Articles of Association,
 - Tax Clearance Certificate,
 - CAC's forms CO 2 and CO7,
 - Company Profile,
 - Feasibility Studies showing 3 year financial statements/projections.

Step 2

Company to be invited for Power Point Presentation on the project for which it seeks Pioneer Status incentive. Presentation format is as follows;

- Details of ownership/History of Company,
- Market Analysis (Types of products, uses of raw materials, local content, demand/supply of raw materials, demand/supply of finished goods),

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- Technical Analysis (Plant Details, Process of production, environmental factors,
- Financial Analysis (Total value of Investment, Land & Building, Plant & Equipment, Other Assets, three – year financial statement including profit & loss statement),
- Employment Generation/Knowledge Transfer,
- Corporate Social Responsibility,
- Review of Performance since Incorporation,
- Justification (including the economics) why Pioneer Status incentive should be granted,
- Utilization of savings on the tax relief, and
- SWOT Analysis of the project.

Step 5

On approval by NIPC Management, the Commission will cause a Letter of Notification to be issued to the successful company. This Letter will also indicate the value of two *per cent* Service Charge from the 30 *per cent* corporate tax savings, to be paid to the NIPC as Service Charge.

Step 6

On payment of the requisite Service Charge, the NIPC will then convey the formal Approval –in – Principle of Pioneer Status incentive by way of an **Approval Letter** to the beneficiary/successful company.

Step 7

Copies of the **Approval Letter** will be forwarded to the Federal Inland Revenue Services (FIRS), the Industrial Inspectorate Department (IID), Federal Ministry of Trade & Investment, and the state Government where the project is located, for their information and necessary action.

Processes of Administering Pioneer Status

Based on the need to create a system that is devoid of discretionary practices and to ensure that the project for which Pioneer Status is granted adds value and works for the local economy, in line with the legal framework and the policy objectives of the government in fostering favourable investment climate, the following principles and parameters guide the implementation of the incentive;

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- (a) Employment generation,
- (b) Technology transfer,
- (c) Value addition,
- (d) Local content (raw material utilization),
- (e) Corporate social responsibility,
- (f) Value of the investments,
- (g) Host community relationship management,
- (h) Compliance with labour laws,
- (i) Compliance with environmental laws,
- (j) Export potentials,
- (k) Value chain development (Linkages with SMEs).

A Power Point Presentation is a requisite for applicant companies, to enable the “Technical Committee” in the Commission to appreciate the concept, economics and possible value addition of the project, to the economy.

A Verification visit is also undertaken by a Team from the Commission to the site location of the project, to confirm claims made by the applicant especially as regards;

- Working conditions
- Labour Issues
- Host Community Relations Management issues,
- Nature of Technology employed,
- Employment Generation,
- Production Process,
- Products and Services.

Preparation and forwarding of Memorandum for Management’s consideration, based on the economics of the project, report of findings during verification visit, impact and benefit of the project on local economy etc.

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Roles of the Agencies involved in Pioneer Status Administration in Nigeria:

The eligibility list of products and services qualified for pioneer status incentive is determined by Federal Executive Council. As earlier highlighted, the administration of Pioneer Status Incentive involves three key Agencies of Government i.e. the NIPC, the FIRS, and the Industrial Inspectorate Department (IID), Federal Ministry of Industry, Trade & Investment.

While the NIPC considers and grants approval in-principle to applicant companies seeking Pioneer Status Incentive, the mandate to determine the “Date of Commencement of production/operations” lies with the IID – Federal Ministry of Industry, Trade & Investment. The Federal Inland Revenue Services (FIRS) implements the Tax holiday incentive and puts in place mechanisms to check abuse.

Ensuring Transparency and Checking Abuses:

The following basic steps are in place to ensure transparency in processing Pioneer applications;

- (a) Submission of requisite documents duly authenticated by the Commission, to ascertain their genuineness;
- (b) A Verification visit undertaken by officials of the Commission to the site of the project, to physically sight the assets and authenticate the claims made by the applicant;
- (c) Ensuring that the project, activity, product or service for which Pioneer Status is being sought, is listed in the approved Pioneer Schedule;
- (d) A Pioneer Certificate issued to successful applicants, upon receipt of the “Production Day Certificate” from the Industrial Inspectorate Department, Federal Ministry of Industry, Trade & Investment, clearly indicates the nature of the activity or the specific product/service for which the incentive was granted; and the exact location of the project etc.;
- (e) The enforcement of the Pioneer Status is the responsibility of the FIRS including periodic monitoring of the utilization of the incentive. FIRS audits these companies check possible abuses;
- (f) To ensure that there are continuous improvements in the administration of the Pioneer Status, an Inter – Ministerial Committee has worked on some reform initiatives which are currently being implemented.

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The Commission has also taken cognizance of some reported cases of abuse and has put in place measures to address them. Some of the steps taken include requesting for a separation of account where the beneficiary company has other activities that were not covered by the approval, stating factory location and specifically in the approval letter, the product(s) or service that the approval letter covers and the specific location of the factory to forestall round tripping.

Equally, the Commission has encouraged greater engagement with the other relevant Agencies in the administration of Pioneer Status (i.e. FIRS, IID – Federal Ministry of Industry, Trade & Investment etc.) to fashion out ways to address any possible areas of abuse.

There is no abuse of Pioneer Status by any of the key agencies of government involved in the administration of Pioneer Status, rather some concerns observed by the Federal Inland Revenue Services (FIRS) from their monitoring activities are promptly attended to and possible leakages identified and blocked.

On the issue of perceived “revenue losses”, the Pioneer Incentive is rather a concession by Government that is made available to investors to help them to navigate through challenges associated with business start-ups so as to enable such business survive, grow and be profitable, and therefore be in a position in future to meet all its tax commitments to government, thereby contributing to its revenue profile.

The companies granted Pioneer Status are given conditions to meet before they are granted the incentive. Such conditions including the need to diversify, or reinvest into further development of the project, showing evidence of employment generation, Corporate Social Responsibility projects for host community etc. will ensure that there are tangible benefits for the local economy, a primary objective for granting Pioneer Status.

Ongoing Reforms on Administration of Pioneer Status

Owing to the challenge of dwindling government revenues in the last two years, and the need to enhance the revenue profile of government, the Commission had commenced the review of the extant Pioneer Status Schedule/List with a view to delisting industrial activities considered to have “Matured” and recommend for active promotion by government and its agencies, new industrial activities in line with the economic policy focus of government i.e. the renewed focus on the non-oil sector of the economy (Diversification Programme), the National Enterprises Development Program (NEDEP), Automotive Policy, Agricultural Transformation and the Industrial Revolution Development Master plans etc., for rapid and sustainable economic growth.

There is the administrative suspension of grant of Pioneer Status to companies operating in the Oil and Gas sector because of its perceived “impact” on government revenues. And also the ongoing Impact Assessment and Evaluation of Pioneer Incentives to companies, sectors and the economy, currently being undertaken to support proper assessment of the effectiveness of the incentive as well as serve as a guide for future reviews and reforms. The underlying objective is to ensure that FDI works for and is beneficial to the local economy.

What Pioneer Status is not?

Pioneer Status covers and applies to only corporate tax holiday. It is not a Waiver for Duty on Imported Equipment, Spares or Parts etc. Pioneer Status does not preclude a company from meeting its other tax obligations including;

- Withholding Tax,
- Education Tax,
- Personal Income Tax,
- Royalties, and
- VAT etc.

There is generally the misconception of “Pioneer Status” as being limited to new innovations in business practices, activities or products. This has however been fully clarified in the Guidelines on the Administration of Pioneer Tax Incentives, to refer to sectors and activities considered priority sectors and growth – drivers of the economy.

In conclusion, it is very necessary to reiterate that contrary to the impression generally created that Pioneer Status is a “Bonanza” and contributes to “revenue losses” to government, it is rather a strategic investment that government does to support the growth of industries against the backgrounds of uncompetitive environment, thereby making them sustainable so as to continue to contribute to economic growth and development.

Pioneer Status remains a veritable tool for attracting and facilitating strategic investments in “Priority” sectors to grow and diversify the economy, and will be a key tool for government as it seeks Investments into the non-oil sector. It will also continue to be a key instrument used to grow the revenues of government, as it helps the beneficiaries be in a position to pay higher and sustainable taxes to government.

A clear example is the **LNG Project**, which we already elaborated on. The bigger picture can be seen at the end of the Pioneer period when beneficiary companies/projects become stable, profitable and strong enough to contribute to the revenue coffers of government by way of taxes, royalties etc. Pioneer Status also remains the most accessible, predictable and functional incentive that demonstrates government’s commitment and support for Business.

In view of the clear benefits to the economy by the Pioneer Status Regime, we would like to seize this opportunity to appeal to this Very distinguished Senate Committee to join in sensitising the general public of the economic importance and continuing relevance of this incentive to the economy and business.

Nigeria Export Promotion Commission:

Export development, promotion and diversification have always been recognized as key strategies for economic growth since the early 1960s, even when trade policy was geared towards import substitution and industrialisation. The provision of subsidies to domestic firms, therefore, is an important policy goal for many governments around the world. One of the main justifications for these subsidies is that they help local industries overcome high cost in the operating environment, especially in developing countries where such imperfections are common.

The “miracle” growth of East Asian economies is often attributed to the extremely rapid export expansion achieved by these countries, which was accompanied by significant macroeconomic policies and government involvement in supporting export. The route to promoting export is to first develop resource-based local industries that can compete in international markets. The second is to provide incentives to local industries not only export, but also to ensure that their products are competitive, given the high costs associated with our environment.

Nigeria’s Foreign Trade Policy:

The Nigerian government, like many other developing countries, considers trade as the main engine of its development, because of the implicit belief that trade can create jobs, expand markets, raise incomes, facilitate competition and disseminate knowledge. The main thrust of trade policy is therefore the enhancement of competitiveness of domestic industries, with a view to, inter alia, stimulating local value-added and promoting a diversified export base. Trade policy also seeks (through gradual liberalisation of trade regime) to create an environment that is conducive to increased capital inflows, and to transfers and adoption of appropriate technologies.

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While this is the main trade policy framework to guide economic growth, the trade expansion, employment generation and poverty alleviation dimensions are now subsumed in a new overarching economic development policy blueprint adopted in 2003, the National Economic Empowerment and Development Strategy (NEEDS). Export development is increasingly becoming an effective strategy especially for the developing countries like Nigeria.

Advent of Export Incentives in Nigeria:

Export incentives play an important role in stimulating export from a country. Almost every country provides incentives to its exporters as a result of the following reasons:

The biggest barrier to exporting is inadequate incentives. Unless some form of coordinated and purposive interventions on the market are implemented, export growth is unlikely to occur:

- (i) The practice of giving export incentives is virtually universal;
- (ii) They create a positive effect on balance of payments on a macro basis;
- (iii) They aim to contribute positively to development strategies of countries;
- (iv) Increased international competition and the struggle for foreign markets require knowing what incentives are most appropriate;
- (v) To encourage expansion of export;
- (vi) To encourage businesses to export certain types of goods or services;
- (vii) To make or keep domestic products competitive in the global market; and
- (viii) To facilitate greater market penetration and encourage domestic value-addition.

Enabling Laws:

Government's efforts at propelling the growth and development of local industries especially for export, led to the promulgation of various statutes in the past. The export (Incentives and Miscellaneous Provisions) Act of 1986; this Act provides incentives to manufacturing exporters of exportable products. It has the following components:

- Export Development Fund
- Export Expansion Grant
- Export Adjustment Scheme Fund

Other statutes promulgated by Government to facilitate and promote export include:

- Central Bank of Nigeria Act (Cap 30);
- Customs and Excise Management Act 1958 (N0. 55);
- Industrial Development (Income Tax Relief) Act 1971 (No. 22) ;
- Companies Income Tax Act 1979 (No. 28)
- Nigeria Export Credit Guarantee and Insurance Corporation Decree 1988;
- Nigerian Export Promotion Council (Amendment) Decree 64 and 65 1992;
- NEXIM Decree; and
- Nigerian Export Processing Zones Authority Decree 1992.

The Export Expansion Grant (EEG) is one of the incentives schemes introduced by the initial Decree, and is still maintained in the subsequent amendment.

Export Incentives in Nigeria within the Framework of WTO

The role that subsidy can play in the economic development of a developing country is recognized in the Subsidy and Countervailing Measures (SCM) Agreement. Accordingly, developing country members have been given Special and Differential Treatment. Exemptions from the prohibition on export subsidies are an example of differential treatment to annex VII countries.

Under the WTO Agreement on Subsidies and Countervailing Measures, low income countries have been exempted from the prohibition of export subsidies. However, this exemption does not prevent other member country from imposing other countervailing duties if our subsidised export causes injury to their domestic industry. It should be noted that not all export incentives are subsidies as per the SCM Agreement.

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As one of the countries listed in Annex VII of the SCM, Nigeria is exempted from any prohibition on its export subsidies scheme.

Re-Designed Export Expansion Grant

The Export Expansion Grant is one of the most popular of the incentives, and presently the most functional. The Scheme is very vital for the stimulation of export oriented activities that has led to significant growth of the Non-oil export sector. The revised EEG which took effect from January, 2005 has the following features, based on the objectives of NEEDS:

- Introduction of baseline data and weighted eligibility criteria;
- Rates are now product cum company specific and not wholly product – based as in the old guidelines;
- Double – Dipping is not allowed (An exporter must choose one among existing incentives, e.g. EEG or MEIBS and not both);
- The organized private sector and other stakeholders were fully involved in the designing of the final templates;
- Companies can even compute their EEG rates from their baseline data;

Product Categorization: Products under the Scheme are group under rate bands, viz:

Products Applicable Maximum Rate:

Manufactured Products, 30 *per cent*

Semi-Manufactured Products, 15 *per cent*

Primary/Agricultural Products, 10 *per cent*

The EEG Eligibility Criteria:

The Scheme operates the Weighted Eligibility Criteria in assessing applications for EEG. The baseline data as supplied by individual applicant company is used in its assessment. Thus the method of assessment is “Product Specifications cum Company Performance.”

The Weighted Eligibility Criteria has three bands: 30 *per cent*, 15 *per cent* and 10 *per cent*. The following template is used in assessing the incentive rate of every EEG applicant.

Determination of Exporters Performance

ELIGIBILITY CRITERIA	COMPANY DATA	THRESHOLD	WEIGHT	COMPANY SCORE
Local Value added		20%	20%	
Local Content		35%	20%	
Employment (Nigerians)		500	20%	
Priority Sector		Manufg only	10%	
Export growth		10%	25%	
Capital Investment		10%	5%	

Total Weight = 100%

EEG Rate applicable to the 3 categories of exporters

Scoring Key	Manufacturing (Processed to finished products)	Non-Manufacturing (Processed to semi-finished)	Merchant Exporter and Exporters of Primary Products (including commodities and Solid minerals)
Scores Band	EEG Rate %	EEG Rate %	EEG Rate %
> 70	30	15	10
> 50	25	10	7.5
> 25	20	5	5
>5%	15	0	0
< 5%	0	0	0

Conclusion:

The foregoing indicates a strong relevance for Export Expansion Grant Scheme to be sustained, while a new basket of incentives should be created to support Nigeria’s quest for a place on the top-twenty global economies by 2020, especially with the backdrop of her present positioning the recent ranking of 93 in the world economies.

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Export Expansion Grant enables exporters to partially mitigate the bottlenecks/constraints and high cost of doing business in Nigeria. It is therefore crucial that deserving exporters have easy access to the scheme.

National Automotive Design and Development Council:

In many countries around the world, the automotive industry plays both a strategic and catalytic role in economic development in respect of the following:

- Employment creation,
- GDP contribution,
- Economic linkages,
- SME development, and
- Skills development and acquisition of technology.

The Nigerian Automotive Industry Development Plan (NAIDP) was adopted by government as part of the overall strategy to diversify the economy through backward integration in sectors that have very high potential for employment and positive impact on the balance of payment situation. Nigeria's 20% unemployment rate and an annual automotive average import bill of \$6.2 billion plus \$1.3 billion used to import spare parts and tyres, potentially undermined the economy so the plan was widely applauded by key industry players. The plan's major objective is to bring back automotive assembly and develop local content. The response to the policy so far has exceeded our expectations.

Since the approval of the policy in October 2014, the 14 existing assembly plants and body builders, which were on the verge of closure, had a new lease of life and obtained or renewed technical partnership agreements with global OEMs. Some of these, like VON, PAN, Innoson, Anammco and Leyland-Busan have started assembling new products in 2014.

Since the announcement of the policy, 30 companies have signed commitments with technical partners to set up assembly operations with products as follows:

- Cars/SUV, 6;
- Mini-buses 5;
- Pick-up trucks 5;
- Buses 5; and Trucks 8;

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The current status of implementation is:

- (i) Nissan, VW, Hyundai, Kia cars and SUV, Shacman and MAN Trucks and Ashok-Leyland buses are now assembled in Nigeria.
- (ii) Eleven 11 new companies, including Honda and Century Auto (Toyota), TATA, Coscharis Auto (FORD, Joylong, Dongfeng), Globe Motors (Higer), Leventis (FOTON-Diamler), Kewalram Chanrai (GM, Mitsubishi) and Tilad (Shinery), Aston have been given bona-fide manufacturing status and are on track to start assembly operations this year.

Our emphasis has now shifted to the development of automotive local content.

Concessionary Import of Vehicles:

The automotive industry is capital intensive with low return on investment (5% - 8%). Vehicle assembly plants cost US\$50m to US\$1.2 billion depending except for the pioneers (Germany, USA, UK and France), countries like Japan, Brazil, South Africa, India, Egypt, China, Malaysia, Thailand and Indonesia developed their automotive industry through an automotive policy. One of the elements of such policies is to protect the industry initially, then gradually expose it to global competition. This is because the industry needs time to reach breakeven point (10,000 and 2,000 units per year for cars and commercial vehicles respectively), train manpower in assembly operations, quality control and modern industrial engineering and develop local content.

Similarly, the NAIDP (attached as annex I) provides incentive to encourage vehicle assembly as follows:

- (a) Raised tariffs on import on vehicle fully built units (FBU);
- (b) Allowed vehicle assembly plants to import FBU at concessionary duty in numbers proportion to the vehicles they assembled. They can import two FBU for every vehicle they assemble in 2013-15, one FBU for every vehicle they assemble in 2016-18 and one FBU for every two vehicles they assemble in 2019-22. The details are in table 1.
- (c) The President approve the following as further incentive to investors in January 2014 (attached as annex II):

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- (i) Make allocation to companies to import vehicles at 35% duty only, as approved by FEC, based on their level of commitment to assembling vehicles in Nigeria; and
- (ii) Zero percent duty and zero percent VAT on importation of equipment to be used for vehicle assembly.

Table 1. Vehicle Import Tariffs Current and Prior to the Auto Policy:

S/No	Category	Import Duty prior to the Policy	Current Tariffs	
			Duty	Levy
1	Capital Equipment used for auto assembly	5%	0	0
	Completely Knocked Down Parts (CKD)	5%	0	0
3	Semi Knocked Down Parts (SKDI)	5%	5%	0
4	Semi Knocked Down Parts (SKD II)	5%	10 %	0
5	Fully built cars	20%	35 %	3 5%
6	Fully built cars for assembly plants	20%	35 %	0
7	Fully built commercial vehicles	10%	35 %	0
8	Fully built commercial vehicles for assembly plants	10%	20 %	0

The concessionary import by assembly plants is also aimed at moderating the price rise of vehicles. The assembly plants pledge to the Hon. Minister of Industry, Trade and Investment in mid-2014 that they will not raise prices of their products.

However, they raised prices by about 15 *per cent* average early this year to account for the devaluation of the currency in 2014.

Implementation of the Concessionary Vehicle Import

Importation by Assembly Plants:

The assembly plants apply to the Nigerian Customs Service (NCS) on the number of FBU they will import duty free based on the CKD/SKD they imported for which the NCS has records of. In 2014, only PAN imported 56 FBU cars at concessionary duty (35 *per cent*) as per as we know. At a meeting with NCS in early 2015, they asked for information on the planned production and concessionary import for each company. We submitted the planned production by 21 companies (attached) of 35,102 units and planned concessionary import of 52,676 units. The planned concessionary import is lower than the 70,204 units they are entitled to. Actual production and import will depend on market demand. The list of vehicle assembly equipment to be imported by 12 companies at Zero *per cent* duty has been forwarded to the DG (Budget Office of the Federation) for onward transmission to the NCS.

Importation by Investors in Automotive Assembly:

The provision is to encourage those who are setting up assembly operations to import vehicles at concessionary duty in numbers allocated by the Hon Minister of Industry, Trade and Investment (HM (MITI)). The allocation criteria are based on the gap between the supply of vehicles by the assembly plants and market demand and the average of the vehicle sales by the dealer in the last three years. The importers would be required to submit a bond (copy attached as annex III), valid for one year, to the NCS for the amount of concession they are to enjoy. The bond will be cashed by NCS if the company failed to show progress in its investment after nine months.

The HM (MITI) approved that Dangote Industries can import 500 trucks and 1,200 trucks in 2014 and 2015 respectively at 20 *per cent* duty, for its cement transportation. This approval was forwarded to the Hon. Minister of Finance (HM (FMF)/CME) for her approval and onward submission to the NCS. Prior to the policy, they were importing their trucks at five *per cent* duty.

The HM (MITI) also approved concessionary import of 897 vehicles by Coscharis Motors and 714 vehicles by Globe Motors in 2015. These were subsequently forwarded to the HM (FMF), but is still under consideration by the DG (Budget Office).

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Concessionary Import of Vehicles during International Conferences/ Meetings:

The Council has noted with dismay the practice of giving those without assembly operations approval to import vehicles without any duty, VAT, etc. for use during international meetings/conferences, etc. The numbers allowed for importation are far in excess of the event's requirements and serves as a disincentive to the assembly plants. The last time this happened was in 2014 at the occasion of the World Economic Forum, despite the NAIDP and our protestations. In any case, countries show-case their products at these events, which means our assembly plants should be patronised.

Conclusion:

The response to the policy has so far exceeded our expectations. The existing assembly plants have a new lease of life, while many others are on stream. The major OEMs and their local partners have expressed support for the policy and many of them are planning to set up assembly operations.

This may take a little while as setting up completely new assembly plant is capital intensive (US\$50m to US\$1,200m depending on the project scope). Our focus has now shifted to local content development. With the continued support of government and the National Assembly, the successful implementation of the automotive policy is assured, paving the way to Nigeria's industrialization.

The vehicle tariffs in the Nigerian Automotive Industrial Development Plan (NAIDP) and the concessionary tariffs are substantially higher than before the policy. The NAIDP should therefore not result in revenue loss to government. The Plan's potential benefits to the economy in terms of job creation, SME development, Skills acquisition, forex savings and earnings, extensive linkages with other parts of the economy are immense.

The distinguished Senate may note:

- (i) The importance of the automotive industry and the overwhelming response by investors to the Nigerian Automotive Industry Development Plan;
- (ii) The NAIDP increases import duty on imported fully built vehicles substantially;
- (iii) Note the concessionary import duty provided by the NAIDP to assembly plants is still substantially higher than the duties payable prior to the policy;

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- (iv) Note that only PAN imported 56 vehicles at concessionary duty of 35% in 2014;
- (v) Note that 21 assembly plants plan to produce 35,102 units and also plan to import 52,676 units under concessionary import in 2015. This concessionary import is lower than the 70,204 they are entitled to. Actual production and import will depend on the market demand;
- (vi) Noted that the HM (FMITI) approved that Dangote industries import 500 trucks in 2014 and 1,200 trucks in 2015 at concessionary import of 20 *per cent*. This duty is higher than the five *per cent* they used to pay. This approval was forwarded to the HM (FMF) for onward transmission to the NCS;
- (vii) The HM (FMITI) also approved concessionary import of 897 vehicles by Coscharis Motors and 714 vehicles by Globe Motors in 2015. These were subsequently forwarded to the HM(FMF), but are still under consideration by the DG (Budget Office of the Federation);
- (viii) The need to patronize the assembly plants for vehicles to be used for international meetings and conferences and stop the practice of giving companies without assembly operations concessions to import these vehicles;
- (ix) That vehicle tariffs in the NAIDP and the concessionary tariffs are substantially higher than before the policy. The NAIDP would therefore not result in revenue loss to government; and
- (x) That with the continued support of government and the National Assembly, the successful implementation of the automotive policy is assured, paving the way to Nigeria's industrialisation.

OLAM INTERNATIONAL LIMITED:

In 2014 July, the Federal Ministry of Finance Vide a circular communicated the new Rice Policy. This policy specifies that investors with verifiable backward integration in the rice value chain will be allowed to import rice at 10 *per cent* duty and 20 *per cent* levy. While the pure trade will be charged duty at 10 *per cent* and 60 *per cent* levy. The policy also states that the quantity will be limited to the National Supply Gap to be determined by a Committee.

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2014 July customs, on their own, allows investors to discharge rice at 10 *per cent* Duty Plus 20 *per cent* levy. Olam has paid all duties and levies as demanded by the Custom at the time of discharge.

On December 2014 the Federal Ministry of Agriculture allocated quotas to investors - both existing as well as intending investors. These quotas were retroactive (May 2014 to April 2015).

Olam had imported 243,707Mts of rice for the period of July to December 2014. The quota that was allocated to Olam, in the month of December 2014 was 134,461. This implies an excess of 109,246 Mts.

Post allocation of the above mentioned quotas, Olam Nigeria Limited, being a good corporate citizen did not import any further consignment of rice. Instead Olam cancelled its imports contracts and implored the Ministry of Agriculture to revisit Olam's quota allocation as the quota given Olam was not commensurate with our investment and commitment made by Olam in local rice production.

The Federal Ministry of Agriculture on the 13th April 2015 released the quota allocation for 2015 and has adjusted the current quota (2015) with a reduction; this reduction subtracts the (unintended) excess of the previous year (2014).

Despite the fact that we still believe our quota should be higher, we accepted that the ministry has acted in good faith in recognising that the late release of the 2014 quota was the only reason for the unintended excess by Olam.

On the 14th April 2015, the Nigeria Customs Service (NCS) issued a public notification in some leading dailies that Olam Nigeria owes 3.5 Billion Nigeria due to the excess importation.

On the 15th April, Olam Made a submission to the NCS that Olam has been allotted with a fresh quota and that the excess quantity that we have to pay for 2014 period (May 2014 - April 2015) has been revised downwards to 54,000mt flowing from 50 *per cent* concession agreed by the Ministry following our appeals.

The remaining excess quantity of 54,000mt for 2014 period has been adjusted/set-off from our allocation for 2015-2016 thus leaving us with the net import quota allocation of 246,000mt for the 2015 period (May 2015-April 2016).

On the 30th of April 2015, we saw a public notification about a public Hearing by The House of Representatives on the 4th of May. Olam made a submission which touches upon the above mentioned facts to the honourable House.

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Olam was asked to present the documents of imports made and the payments done against them to the House by the end of the week, which was compiled by us.

Olam has paid all duty and taxes demanded by the authorities for all the rice imported into the country. The late release of the quota was the only reason for the unintended excess by Olam. Around the middle of May 2015, the officers of the Nigeria Customs Service locked up the warehouses and office of Olam in Lagos. A week after this, the High Court of Lagos, on the 3rd of June 2015, granted an *ex parte* order to Olam which clearly states that NCS should not lock Olam's warehouses and office.

On the 28th of July 2015, the Customs again raided and locked Olam's warehouse and office therefore holding the honourable Court in Contempt!

STALLION GROUP:

The imports of our company were governed by the content and stipulation of the 2014-2017 Fiscal Policy measures on Rice of the Federal Government, and that question is ultimately now before the Respected Federal High Court in Lagos for determination.

The new 2014-2017 Fiscal Policy measures on Rice announced by the Federal Government in May 2014 was based on a Preferential Tariff Structure for bona fide rice investors with a verifiable backward integration programme. The import duty plus levy for rice millers with verifiable backward integration programme was stipulated at 30% and that for other pure rice importers at 70%.

Given its integrated operations in the rice value chain as a pioneer since 2007, Stallion Group's companies belonged to the first category (rice millers with verifiable backward integration programme). The status was duly certified to that effect by the Federal Government acting through the Ministry of Finance and the Ministry of Trade and Investment (through official letters).

Again the installed capacities of 430,000 metric tonnes were indicated in the letters as above, issued by the Federal Government through the concerned Ministries. We humbly submit here that our combined milling capacity is one of the largest (if not the largest) in Nigeria. We also have an extensive distribution network to ensure food availability at fair prices across the country. Therefore our companies commenced rice importation in 2014 pursuant to the policy and fully paid Naira 17.15 Billion (30 *per cent*) in duties and levies into the coffers of Government.

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Whilst the circular was clear that only investors with verifiable backward integration programme was to be incentivised under the Fiscal Policy measures, late in November 2014 the Ministry of Agriculture issued “import quotas” for several companies with no existing operations (therefore apparently contradictory to the approved policy).

This issuance in contravention of the FG Circular obviously created a severe adverse impact on the quota allocation for bona fide investor similar to our companies that received very quotas, not commensurate with existing investment. Further, the quotas were issued too late in the year to be able to arrange for any rice shipments within one month. Effectively, therefore the process was viewed by bona fide investors as unfair, against their interest and that of the industry in which that had made significant commitment. The millers have voiced their travails several times to all concerned with on relief.

Following the above, we also made several representations to the relevant ministries for a fair consideration of the facts and a speedy resolution. However, we only faced further action from Nigeria Customs that sealed our premises, impeding our investment and contractual obligations. Adverse media reports further damaged our reputation locally and internationally.

Therefore, to protect our rights and preserve the business and the employment of our staff, our companies had no choice but to appeal to the country’s judicial system for relief and fair judgement.

Therefore under the above circumstance and other supporting factors, Stallion Group’s respective companies involved in the importation are contending in the Courts that any demand for retrospective duties its shipments made and prevalent/stipulated duties/levies fully paid, is not valid.

Stallion Group’s shall duly abide by the ultimate decision of the country’s Courts in this issue. Until then, Stallion is seeking that the group’s extensive business operations in various sectors of the economy continue with full momentum and without undue disruption to thousands of its direct and indirect employees and premises.

In conclusion, we reiterate our position that while Stallion remains fully committed to the growth of the Nigeria’s rice industry, we have proceeded to the court to seek legal redress on the issue that have arisen as a result of the rice policy of the Federal Government. Therefore, we sincerely request that (as is the norm in a sub judice matter) no pre-emptive conclusion is reached in advance of final judgement by the Courts in the country, after a due process.

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We seek the kind understanding of the Distinguished Senate Committee on this matter and humbly appeal for a fair and deserving consideration of all the facts.

MILAN NIGERIA LTD:

This company informed the committee that:

The company did not exceed the allocated quota of 27,705mtns by the Federal Ministry of Agriculture and Rural Development Vide a letter dated 27th November, 2014: The importation of was done through M.V Steel courage and assessment and import duties amounting to ₦841,966,411.11 was paid.

MEDITARION NIGERIA LTD:

On the importation of cube sugar, the company informed the committee that M forms were approved before the ban on sugar was introduced. The importation was done with specific approval form Federal Ministry of Finance vide approval dated 29th July, 2013. According to the company, they neither applied for any waiver nor were given any. The import duty on the importation of 18,385mtns was paid.

EBONY AGRO:

The background to the matter is as follow:

- (i) We are owners and directors of a group of two rice processing companies- Ebony Agro Industries located in Ebonyi State and Tara Agro Industries in Enugu State. The two companies are in public Private Partnership with the Federal Government through the Federal Ministry of Agriculture.
- (ii) The projects were part of Federal Government Initiative to boost local Rice processing capacity aimed at achieving self-sufficiency in the critical rice sector. Unfortunately, owing to policy and infrastructural constraints, many of the participating companies could not take off; and of those that attempted to establish mills Ebony Agro Industries and Tara Agro Industries are about the only mills effectively standing and running. Indeed, we are by no means rice merchants;
- (iii) Indeed the two mills are pioneer rice mills, which have braved tremendous odds and handicaps to establish successful and visible Rice brands of international quality, making Nigeria proud and challenging the rice merchants and economic saboteurs who seize opportunity to freight all manner of stale food into Nigeria.

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- (iv) We have in employment 110 Nigerians at Ebony Agro Industries and 62 at Tara Agro Industries.
- (v) One of the major challenges facing local rice investors is inadequacy of local Paddy to feed the existing mills. In response to this challenge, and in order to temporarily close the local demand-supply gap in the rice market, the Federal Government in 2014 granted import license to rice investor and merchants to import Rice. Ebony Agro and Tara Agro Industries were beneficiaries of the license.

Facts of the Rice Import Quota:

- (i) Import quota of 15,000tons and 21,000tons were approved for Ebony Agro Industries and Tara Agro Industries respectively, giving a total of 36,000tons for our two Rice Mills. In keeping with the paddy requirements of both companies at the time, we opened a Letter of credit for the importation of 25,000tons of the 36,000tons approved, consolidated in the name of Ebony Agro Industries Limited. Of the 25,000tons imported, 15,000tons were assigned to Ebony Agro Industries, while 10,000tons were earmarked for Tara Agro Industries, leaving a positive aggregate quota differential of 11,000 tons.
- (ii) This consolidation (under one Bill of Lading) was done for operating convenience to give us better price negotiation, viable ship charter and local handling arrangement at the port.
- (iii) We imported Brown Rice (pure raw material) to be further processed in our mills in line with the directives of the Federal Ministry of Agriculture. We did not import finished/milled Rice package for retail sale. Full import duties were paid and receipted by the Customs Authorities. All delivery/discharge tallies are available for examination and inspection.

The foregoing background and clarification was presented to the Customs Authorities and later to the House of Reps Ad-hoc Committee on Rice Import Quota and Duty payment, supported by relevant documentation. Consistent with the facts, the Committee was able to discern the spirit and honesty of our intentions. This was reflected in their report, which recognized the two companies as member of the same group with an aggregate quota of 36,000tonnes of which 25,000tons were utilized.

Consequently in paragraph 5 of its recommendations, the Committee affirmed as follows;

“Tara Agro Industries and Ebony Agro Industries are sisters companies run by the same management. Their liabilities should be consolidated in line with their quota allocations”.

This is in addition to an earlier letter from the Federal Ministry of Agriculture to the Customs Authorities clarifying that Ebony Agro Industries and Tara Agro Industries are owned and operate by the same management.

Surprisingly, in spite of our clarification and the recommendation of the Committee, the Customs Authorities continued to accuse us of quota violation; and to impute liability for duty payment on the alleged excess quota of 10,000tons. Currently, the matter has degenerated to the level where our factory is being targeted for seal-off and black-listing by the Customs Service.

As a responsible corporate citizen operating under a public-private partnership with the Federal Government, and managed by Nigeria entrepreneurs of impeccable integrity, we find the position of the Customs Service totally embarrassing.

Beyond that, and as a company grappling with the enormous infrastructural challenges, this imputation of quota violation and the associated liability is a sledge hammer capable of destroying one of the very few Nigerian indigenous companies in the Rice Value Chain today delivering excellent product brands.

We therefore earnestly appeal for your early intervention in the crisis in order to save the enormous investments in capital and labour made by the promoters of the company and the Federal Government towards the achievement of food security for our people. We have over the years made weighty sacrifice to bring what was initially a project to the level of a full commercial enterprise. Therefore destroying our efforts at this point through bureaucratic rigidity is not the best way to reward our patriotism, and on a wider scale, promote local investment.

OVERSIGHT VISIT/PHYSICAL INSPECTIONS IN THE SOUTH EAST:

The following distinguished senators listed below were nominated to embark on the journey to:

- (1) Ebony Agro Industries Ltd, Ikwo in Ebonyi State

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- (2) Anambra Motor Manufacturing Co. Ltd,
Emene, Enugu State
- (3) General Appliances Nigeria Ltd, Egede – Udi,
Enugu State
- (4) Sunshine Hotels and Guest House Limited,
Enugu
- (5) Tara Agro Industries Limited, Adani, Enugu
State
- (6) Innoson Motor Manufacturing Co. Limited,
Nnewi, Anambra State

MEMBERSHIP:

- | | | |
|-----------------------------|---|--------|
| (1) Senator Dr. Sam O. Egwu | - | Leader |
| (2) Senator Tayo Alasoadura | - | Member |
| (3) Senator Danjuma La'ah | - | Member |

ABSENT:

- | | | |
|-------------------------|---|--------|
| Senator Stella A. Oduah | - | Member |
|-------------------------|---|--------|

APOLOGY:

- | | | |
|--------------------------|---|--------|
| Senator Danladi Abubakar | - | Member |
|--------------------------|---|--------|

SECRETARIAT:

- (1) Uche U. Uche - Assistant Committee Clerk
- (2) Barr. Ikechukwu Agbo - SLA to Sen. Dr. Sam
O. Egwu

1. The Delegation departed Abuja on Thursday, 19th November, 2015. On arrival at Ebonyi State, the Committee paid a courtesy call on His Excellency, the Executive Governor of Ebonyi State represented by the Deputy Governor, Barr. Kelechi Igwe and members of the Executive Council. They warmly welcomed the Committee followed by interactive session on the mission of the Committee to Ebonyi State. The Deputy Governor expressed optimism on the outcome of the visit given the capacity and experiences of the membership.

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2. Ebony Agro Industries Limited; the Committee arrived at the company on Friday, 20th November, 2015 and were received by the Chairman and entire management staff of the company. The Committee had interactive session on the National Rice Policy and on the utilization of the Rice Quota in 2014. Thereafter, took a tour of the rice processing factory from stages to stages as accompanied by the Chairman, Engr. Chief Charles Ugwu, the Managing Director, Chief Ekenma and others. It has a milling capacity of 30,000 metric tonnes per annum and has over 100 employees at present.

In the course of the visit, the Committee noted that there is no waste product in rice processing right from the brown husk to the dust which is converted as briquette for powering of the oven and other cooking stoves.

Ebony Agro Industries Limited had invested heavily in their backward integration plan through empowerment of out-growers of rice with modern seedlings and funding. They purchase paddy rice from the out-growers and also train them in modern farming techniques. The company which is a Public-Private Partnership is doing well and deserves to be encouraged.

CHALLENGES:

- The issue arising from the 2014 Rice import Quota, for which the Nigerian Customs Service is demanding from them the sum of N328,201,440.00 as outstanding duty on the brown rice (raw material) imported in 2014;
- Influx of smuggled rice into the Nigerian markets;
- High cost of funding as interest rates in Nigeria is outrageous;
- Lack of mechanized farming equipment;
- Lack of modern seedling, pesticides and other inputs;

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3. Anambra Motor Manufacturing Company Limited (ANAMMCO): The Company was incorporated in 1977. Following Federal Government's joint agreement with Daimler, Daimler became the technical partner and co-shareholder. It was commissioned on July 8, 1980 and commenced operation in 1981.

The annual installed capacity is 7,500 trucks and 1,000 buses in one shift operation. It achieved the highest annual volume of 4,260 in 1981. In 2007, the Federal Government partly divested and Daimler wholly divested. The assembly is now running on third party contract and shall commence the assembly of its own franchise in the first quarter of 2016.

The company at present employs 60 workers for the third party assembly project while additional 100 workers will be hired in the first quarter of 2016.

CHALLENGES:

- Inconsistencies and policy somersault on the part of government;
- Influx of fairly used trucks, buses and cars had vitiated efforts being made by the assembly plants;
- High cost of funding;
- Lack of patronage;
- Availability and rate of foreign exchange;
- Endemic infrastructural challenges; and
- Tortuous annual revalidation procedures.

4. GENERAL APPLIANCES NIGERIA LIMITED now known as EASTERN VEHICLE ASSEMBLING LIMITED:

The company is one of the privately owned and newly licensed by the Federal government to manufacture/assemble, sales and service automobiles in Nigeria, West and Central African Republic. The company is the owner of the brand "EVAL". This is a trademark for a range of automobiles, ranging from SUV series, Sedans, Buses, Pick-ups and Light trucks.

Eastern Vehicle Assembling Limited went into joint venture partnership with Brilliance Autos of China who are also Joint venture partners of BMW (Germany), Brilliance Autos are owners of Brilliance brands, Jin Bei autos, Heng Tong buses of China and are the official manufacturers of BMW vehicles in China.

The factory has land coverage of 400,000 square meters and will build 3 modernized production lines with an annual production capacity up to 6000 units of vehicles. They have completed the assembling hall for the SKD1, while structural foundations have been laid for the SKD2, now waiting for the arrival of the factory equipment which has been fabricated in China. Hopefully, production of vehicles will commence in 1st quarter of 2016. The company has not yet utilized the concession. At completion it is expected to employ between 500 – 700 Nigerians.

Challenges:

- Shortage of power as the Assembling plant is dependent on generators to power their machinery and equipment;
- Policy inconsistencies on the part of the government;
- Difficulty in sourcing for foreign exchange;
- Lack of infrastructures; and Inadequate or shortage of skilled manpower.

SUNSHINE HOTELS AND GUEST HOUSE LIMITED:

The Committee visited the Hotel on Saturday, 21st November, 2015 for physical inspection of the project. The project for which the concessions were given is located at 68/72 Presidential Road, Independence Layout, Enugu.

The Hotel undergoing construction is a 7-storey hotel at finishing level. About 80% of the project has been completed with only a third of the concession accessed.

The Committee inspected various levels of the hotel including their over 800 seating capacity hall which has been fully completed. The Executive Chairman, Engr. Emeka Nwandu, informed the Committee that they have only utilized 30% of the concession owing to intermittent withdrawals and premature stoppage of the concession by the Nigeria Customs Service. At completion the hotel will employ over 200 Nigerians apart from outsourcing of Security services. The physical inspection shows that the company is on track.

CHALLENGES:

- Unilateral stoppage of the concession by the Nigeria Customs Service; as cargoes shipped into the country could not be cleared.

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- In January 2015, the Nigeria Customs Service mandated the company to pay full duty for all the containers cleared at that time, even in some demurrage was also paid.
- Form M processing is another major challenge as getting the approval of the Central Bank of Nigeria is a herculean task.

CONCLUSION:

The oversight visit and physical inspection was worthwhile and quite educative as the Committee now has first-hand information on the operation, achievements and challenges of the companies visited. However, the Committee could not make it to Innoson Motor Manufacturing Company Limited, Nnewi in Anambra State due to logistics.

PHYSICAL INSPECTION OF PROJECTS IN LAGOS STATE

The following distinguished Senators were nominated to embark on the journey to Lagos:

MEMBERSHIP:

1. Sen. Muhammed Adamu Aliero – Chairman
2. Senator Gershon Bassey – Member
3. Senator Rafiu I. Ibrahim – Member
4. Sen. Bareehu Gbenga Ashafa - Member
5. Senator Albert Bassey Akpa - Member
6. Senator Isa Hamma Misau - Member

APOLOGIES:

1. Senator Sabo Mohammed – Member
2. Senator John Owan Enoh - Member

SECRETARIAT:

1. Mr. Victor Efiog - Committee Clerk
2. Chief (Barr.) Felix Okonti - Consultant

COMPANIES VISITED:

STALLION GROUP/VON AUTOMOBILE NIGERIA LIMITED:

The team visited the company which is situated at the premises of VON Automobile Nig. Ltd along the Badagry Expressway. The company is into assembly of semi-knocked-down (SKD) 1 & 2 such commercial vehicle as long buses, mini buses, light trucks, heavy duty trucks and garbage compactors. Their passenger cars are Nissan, Hyundai, Volkswagen and Chinese brands of BAIC, Changan, Jibei pick-up. They also assemble specialized vehicles such as troop carriers and armoured vehicles too.

Utilization of Concession:

Stallion Group has utilized the concession granted to the company as follows: Under Completely-Knocked-Down (CKD) operations; 600 body kits and 600 chassis kits have been imported and utilized for the Troop Carriers.

For Semi-Knocked-Down (SKD) operation, the following have been utilized:

- a) Hyundai – 1,486 units;
- b) Ashok Leyland – 78 units;
- c) Volkswagen – 198 units;
- d) Nissan – 2, 252 units
- e) Chinese – 168 units.

Benefits: According to Stallion Group (Automobile), the use of the concession had brought immense benefits to the company via:

- Employment generation – direct and indirect and acquisition of skills;
- Training;
- Increase in local value addition;
- Use of local components;
- Infrastructure development;
- Increase in tax revenue;
- Progressive import substitution;

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- Foreign exchange conservation;
- Potential export to ECOWAS States;
- Sustainable source of Non-oil revenue; and
- And significant contribution to gross domestic product.

CHALLENGES:

- Lack of access to foreign exchange since the oil market crash;
- Non-implementation of the Auto Policy;
- High operating cost arising from low capacity utilization;
- Low consumer purchasing power;
- Lack of government patronage;
- Lack of skilled manpower; and
- Customs operations.

The Committee took a tour of the assembling plant and also inspected the quality of the finished products.

DANA MOTORS NIGERIA LTD

The motor plant is situated in a 31,500 square meters of land with 15,000 square meters fully built. The plant is currently operating with single line operation (single shift) with annual capacity of 6,336 units.

The plant is basically assembling Kia Models of vehicles (SKD 1) such as Sorrento, Soul, Sportage and Picanto cars. A trial production of Rio, Cerato and Optima is currently on at the plant. The company employs about 300 staff. They have been rigorously inspected and monitored by the National Automotive and Design Council, Manufacturing Association of Nigeria, Federal Ministry of Finance and Nigeria Customs Service.

The current automobile policy should be allowed to run through its course without interference and the policy should be fully implemented. The major challenge is the influx of fairly used vehicles popularly known as tokunbo cars which occupy 35% of vehicle business in Nigeria.

COSCHARIS MOTORS NIGERIA LIMITED:

This is wholly owned indigenous private limited liability company incorporated in 1983 and commenced business in August 1983. Between the current two dealers in the Ford brand, Coscharis controls 70 *per cent* of the Ford market in Nigeria. The company has sold over 2,248 units of vehicles from 2006 to 2014.

The company have keyed into Automotive Industry Development Plan which is to run from 2014 to 2024 and investors are allowed to start with SKD2 then move to SKD1 and finally to CKD. Coscharis has invested in SKD project in order to take advantage of concessions on tariff while closely monitoring the performance of the new automotive policy to determine the way forward for CKD.

The Committee visited the assembly plant with assembly line for the SKD at Ikeja in Lagos. The plant is most comprehensive and modern plant visited by the Committee.

The challenge faced by the company is clearing for the SKD units at the port. For example, the Federal Ministry of Finance wrote to the Nigeria Customs Service on 8th September, 2015 recognizing them as a manufacturer/assembler of vehicles but it took Nigeria Customs Service two (2) months to issue a letter of recognition to the company.

The company also prayed the Committee that the automotive policy should be allowed to run its course so that it does not fall victim of policy somersault after making heavy capital investment in the CKD plant.

GLOBE MOTORS NIGERIA LIMITED:

It is recognized as manufacturer and assembler of vehicles. They were granted approval to import 714 vehicles at concessionary rate.

1. 660 cars/SUVs/Pick-up/Mini-buses;
2. 47 buses with more than 16 seaters; and
3. 7 trucks.

The company has utilized the concession as the process of clearing their initial consignment is still on-going. They have ordered equipment and tools for the plant and have sent personnel to China for training. According to them construction work is 90% completed at their temporary site in Agungi area of Lekki phase 1.

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CHALLENGES:

- Lack of electricity;
- High cost of funds (interest rate is very high);
- Prevalence of fairly used vehicles; and
- Paucity of infrastructure

DANGOTE SUGAR REFINERY:

The Committee visited the company on Saturday, 21st November, 2015 at Tincan Ports, Apapa in Lagos. The company has installed capacity of 1.44 metric tonnes per annum. It is currently refining raw sugar imported from Brazil to 45 ICUMSA, vitamin A fortified and non-fortified white sugar, cultivation and milling of sugarcane to finished sugar.

Dangote Sugar Refinery employs over 1500 Nigerians. It plans to produce 1.5 to 2.0 metric tonnes per annum of refined sugar from locally grown sugarcane in 10 years. The company is one of the two companies that benefitted from the Nigerian Sugar Master Plan (NSMP) which involves the following incentives:-

- Zero percent import duty on machinery and spare parts;
- 5 year tax holiday;
- Up to 30 *per cent* tax credit on cost of provision of critical infrastructure; and
- evolving loan from Sugar Levy Fund.

Dangote Sugar Refinery Backward Integration Plan (BIP) had invested over ₦18bn in Savannah Sugar Company Limited after its privatization. Dangote Sugar acquired 95 *per cent* stake in Savannah Sugar Company Limited in December, 2012 at the cost of ₦3.21billion and have invested over ₦33.05billion on farming equipment, rehabilitation of Savannah Sugar Company Limited Estate, Land acquisition (Greenfield projects), importation of cane variety, community settlement and staff compensation and welfare packages and qualified manpower.

The company intends to expand her backward integration plan to Jigawa, Kwara, Kebbi and Kogi States respectively.

CHALLENGES:

- Inconsistent government policies;

- Lack of infrastructures;
- Stringent financing/ huge investment;
- Lack of qualified manpower/ skills in sugar planting and production;
- Near total dependence on imported machinery and spare parts;
- Availability and/or acquisition of huge land mass;
- Community relations and security issues; and
- Flooding risks and cost of irrigation.

The Committee took a tour of the sugar refinery and also arranged with the management to visit the Savannah Sugar Company Limited at Numan in Adamawa State to see the backward integration plan for itself.

SCOA MOTORS:

SCOA Nigeria Limited started business in Nigeria in 1926 and six year after, precisely in 1932, SCOA Nigeria Limited ventured into automobile industry, through SCOA Motors Division. SCOA motors established automobile assembly plant for the assembling of Peugeot 404 and 504 pick-ups in 1952.

Currently SCOA motors have established assembly plant for trucks and buses (MAN) for transportation and construction industries.

The assembly plant is to create jobs for teeming Nigerian youths and complement the Nigerian Railways and also produce for export to West African sub region.

The plant has an installed capacity of 2000 units anchored on a twin production line, though only one line is operational now. The company apart from assembling of trucks and buses intends to go into the production of concrete mixer, garbage compactors and truck cranes. The MAN trucks and buses assembly plant employs over 56 staff.

CHALLENGES:

- Lack of access to finance;
- Recent CBN regulation with regards to forex;
- Unfair competition;
- Lack of government patronage; and
- Contradiction in the national automotive policy.

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BUA SUGAR REFINERY:

The Committee took a tour of the refinery. The management of the company made presentations before the Committee which the Committee deemed unsatisfactory. The Committee was quite dissatisfied with Bua Sugar Refinery's backward integration plans considering concession enjoyed by the company. In fact, all their plans were still in the pipeline, though we sighted the acquisition of land and host community as the main problem.

MILAN RICE MILL, IMOTA:

Milan group through its subsidiary Conti Agro in partnership with Lagos State government is currently operating the rice mill at Imota, also called Eko rice project which was commissioned in 2012. The Committee undertook a tour of the mill. The mill is far from being addressed as an integrated rice mill. What is on ground such as machinery fall far below empirical expectations? If this mill is what qualified Milan Group to be allocated 2014 rice import quota, the allocation is a dis-service to the nation.

HOTELS/ HOSPITALITY SECTOR:

Table below shows the list of all beneficiaries of concessions in the hospitality sector within the period under review as released to the Committee by the Budget Office of the Federation. The Committee randomly selected a number of hotels and requested for information on the utilization of the concessions.

YEAR 2011	
S/No.	NAMES OF HOTELS
1.	Chelsea Hotel
2.	Sunshine Guest House & Hotels Ltd
3.	Sandralia Hotel Ltd
YEAR 2012	
1.	Hotel Invest Ltd
2.	Gee Plaza Hotels Ltd
3.	Hotel Dabras (Nig) Ltd
4.	First Continental Properties Nig. Ltd
5.	Grand Pela Hotel
6.	Spanish Villa Hotel Ltd
7.	Sandralia Hotel Ltd
8.	A. A. Entertainment & Tourism Ltd
YEAR 2013	
1.	Himograph International Nig. Ltd (Police Force contractor)
2.	Acople Hotels Ltd
3.	Elim-Top Suites Limited
4.	AMSSCO Limited
5.	Elvis Garden Hotel Ltd
6.	Luxurium Leisure Service Ltd
7.	Noktel Resorts Ltd
8.	Chida International Hotel
9.	Bayelsa State Hotel Ltd

10.	Sunshine Hotels & Guest House Ltd
11.	Naks Hotel & Tower Ltd
12.	D'Palms Airport Hotel Ltd
13.	Serob Legacy Hotels
YEAR 2014	
1.	Praise Hotels & Water Park Ltd
2.	Dona Mario Hotels & Suites Ltd
3.	Top Rank Hotels Ltd
4.	Harka Investment International Ltd
5.	Stevemec Hotels & Suites Ltd
6.	News Engineering Nig. Ltd
7.	Vinimo Limited
8.	Chelsea Hotels Limited
9.	Idyll Fountain Hotels & Gardens Ltd
10.	Ronesans Nigeria Ltd
11.	Armitage Hotel & Suites Ltd
12.	Skill Suites Limited
13.	Prejoy Limited
14.	Primeview Hotels Limited
15.	Victoria Crown Plaza Hotel
16.	Cynergy Suites Limited
17.	Kamsi Hotels & Suites Ltd
18.	Le Meridian Grand Ikoyi Towers and Resorts/SIO Properties Ltd
19.	Noble World Hotels & Suites
20.	Robert Dyson & Diket Ltd
21.	Ezeg Diamond Hotel & Suites Ltd
22.	Nech & World Hotels Ltd
23.	Mob/ Nech Construction Company Ltd
2015	
1.	Royal Pacific Group Ltd
2.	Corinthia Villa Hotel & Suites Ltd
3.	Sigma Apartments Limited
4.	Best Global High wave Hotel & Suites Ltd
5.	Quantum Luxury Properties Ltd
6.	Lava Continental Ltd
7.	Avalon Intercontinental Ltd
8.	Barrier Reef Limited
9.	Moi Gardens Hotels and Apartment Ltd
10.	Honeywell Hotels Ltd

FINDINGS: The Commit

GENERAL:

That there is large scale revenue leakages that robbed government of huge sums of money that would have been used for provision of infrastructural development and social services.

Find below summary of Revenue Losses arising from import duty waivers and concessions:

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S/No	YEAR	REVENUE THROUGH CONCESSIONS & GRANTS	LOSSES WAIVERS, &
1.	2011	~~N~~ 78,489,941,114.74	
2.	2012	~~N~~ 128,538,453,758.99	
3.	2013	~~N~~ 46,056,265,355.78	
4.	2014	~~N~~ 87,654,744,360.22	
5.	2015	~~N~~ 106,711,892,098.14	
TOTAL		~~N~~447,451,296,687.87	

Source: Nigeria Customs Service

That all the Ministries, Departments and Agencies (MDAs) implementing import duty waivers, concession and grants expressed optimism in the benefits of the policies in terms of employment creation, Gross Domestic Product (GDP) contributions, economic linkages, small/medium enterprises development, skills development and acquisition of technology.

That there is no synergy among Ministries, Departments and Agencies (MDAs) charged with the responsibilities of administering import duty waivers, concessions and grants, e.g. Federal Ministry of Finance, Nigeria Customs Service, Federal Ministry of Industries, Trade & Investments, Nigeria Investment Promotion Council, Federal Ministry of Agriculture & Rural Development and Federal Inland Revenue Service are not working together.

That there is gross abuse of the process by implementing Ministries, Departments and Agencies ((MDA) especially the Budget Office of the Federation that continued to abuse Presidential Approval Process through reliance on staled delegated power by President Umaru Musa Yar'Adua to Dr. Shamsudeen Usman, then Minister of Finance via letter reference No. PRES/87 of 27th May, 2008 to act without recourse to Mr. President, Tariff Board and Tariff Review Technical Committee.

That the Tariff Board and Tariff Review Technical Committee had not been functional for about 20 years. This has given room to the Budget Office of the Federation to arrogate so much power to it and hijacked the functions and powers of the Tariff Board and Tariff Technical Review Committee to receive and review applications for import duty waivers and concessions, and advise Mr. President accordingly for his approval or decline. This has also given rise to the unwholesome practices surrounding import duty waivers, concessions and grants;

EXTENSION OF TIME

Senator Bala Ibn Na'allah: Mr. President, point of Order!

The President: Senator Bala Na' Allah, what Order!

Senator Bala Na' Allah: Mr. President, in view of the fact that it is 1.44 p.m. I move that we extend the Sitting of today beyond 2.00 p.m. to enable us take the report.

Senator Emmanuel Bwacha (Taraba South): Mr. President, I second the Motion.

Question put and agreed to.

The President: Committee Chairman, please continue.

That customs duty waivers and concessions have been used by the Budget Office of the Federation to entrench a very destructive patronage system to our economy; whereby very few operators in the economy were singled-out for favours resulting to unfair competition in the system.

That as a result of the application of the above discriminatory system, many would-be investors were discouraged from investing in Nigeria as many local and foreign investors had cited this as one of the reasons for not having interest to invest in the country. The above is buttressed by the favours and patronage dispensed to the following companies, to name a few, to the detriment of other operators in the economy:

RICE SECTOR

- Stallion Group/Popular foods,
- Olam International Ltd,
- Elephant Group,
- Bua Int. Ltd and
- Honeywell Group

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CEMENT SECTOR

- a) Dangote Group,
- b) Ibeto Group and
- c) Bua Int. Ltd.

SUGAR SECTOR:

- a) Dangote Sugar,
- b) Meditarion Nig. Ltd and
- c) Bua Sugar

AUTOMOBILE SECTOR

- a) Coscharis,
- b) Globe Motors,
- c) Stallion Group.

That the Federal Government lost billions of naira through concessions and import duty waivers granted to contractors to Federal and State Government projects. The process whereby contractors sought and obtained import duty waivers and concessions for contracts which they had already charged government for full project cost leading to serious revenue loss to the Federation.

That there were serious lapses leading to huge revenue losses to Government in the continued use of obsolete Customs & Excise Management Act (CEMA) of 1958 CAP C45 LFN 2004, e. g. some of the penalties for contravening the law are still in pounds and shillings.

That, whereas the Federal Inland Revenue Service is mentioned by Nigeria Investment Promotion Council in their submission as an implementing agency with respect to tax holidays administration but the agency in its submission stated that

It does not have any role in the grant or implementation of the waivers.

That the Nigeria Investment Promotion Council charges 2% from the 30% Corporate Tax Savings as service charge from successful companies enjoying pioneer incentives.

That the process of disbursement of Export Expansion Grant (EEG) administered by Nigeria Export Promotion Council leaves room for abuses, thereby causing revenue loss to Government.

That many companies were granted multiple incentives of import duty waivers, concessions, pioneer incentives and grants within the same period leading to losses in revenue to the Federation.

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That it appeared there was perennial supply gap in the system leading to incessant request for grant of import duty waivers to import in order to meet the national supply gap.

RICE SECTOR:

That the rice import quota policy was anchored on the need to fill national rice supply gap with preferential duty rate of 10% and 20% levy to local Rice Millers only with backward integration plan.

That a total of 27 companies benefitted from the rice import quota with total allocation of 1,434,658 metric tonnes.

That some of the beneficiaries imported the rice into our seaports before the approval and release of the rice import quota

That a large amount of finished parboiled rice was imported into the country thereby not only jeopardizing the self-sufficiency goal of the national rice policy and the development of the rice value chain, it also put additional stress on the demand for foreign exchange within the period.

That as a result of accumulated demurrage and on the request of importers, the Ministry of Finance intervened and approved the acceptance of corporate indemnity by Nigeria Customs Service instead of Confirmed Bank Guarantee.

That the corporate indemnity provided by rice importers were without bank or insurance backing and therefore was inadequate or of no effect in the recovery of revenue due to government;

That the Committee, on physical inspection of projects, found that the Milan Group Rice Mill at Imota-Ikorodu, Lagos, is far from being an integrated rice mill. What is on the ground such as machinery, fall far below expectation.

That some of the beneficiaries of import quota in rice exceeded the quota allotted to them thereby leading to oversupply of parboiled rice jeopardizing local production and processing which ultimately undermines self-sufficiency in food production.

That the following four companies exceeded the Rice Import Quota for 2014:

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S/No	COMPANIES	QTY EXCEEDED (MT)
1.	Olam International Limited	149,469.51 mt
2.	Stallion Group/ Popular foods	529,517.33 mt
3.	Milan Nigeria Limited (Conti Agro)	44,641.19 mt
4.	Ebony Agro Nigeria Limited	10,070 mt

That the revenue due to the Federal Government as a result of the excess import by these four (4) companies as stated in the above table is valued at ~~₦~~23,603,479,402.44 (₦23.603 billion);

That Ebony Agro has a sister company, Tara Agro, which was given 21,000 metric tonnes of rice not yet utilized.

That there are four key criteria to be met by would-be beneficiaries under the rice import quota in 2014:

- (a) Domestic Rice Production Plan over a three year period including evidence of land acquisition, establishment of rice farms and paddy production.
- (b) Plan of paddy purchase from Paddy Aggregation Centres including volume of expected paddy to be purchased.
- (c) Paddy purchase from out-grower farmers and farmer cooperatives including location of farms; and
- (d) Ownership of integrated rice milling facility with par boiling machinery and pre-cleaning equipment.

And the following beneficiaries did not meet the criteria:-

- i. Dangote Limited,
- ii. Elephant Group/ JINI concession,
- iii. Kersuk Farms,

- iv. Bua Group,
- v. Elephant Group,
- vi. Golden Penny, and
- vii. Milan Group.

SUGAR SECTOR:

That the estimated value of levy waived in the Sugar sector between years 2011-2012 alone is put at ~~₦~~17.41 billion naira.

That the Nigeria Sugar Master Plan which implementation commenced in January 2013, provides for concessionary tariff of five *per cent* import duty and five *per cent* sugar levy for three years effective 1st January 2013 to December 31st, 2015 for raw sugar imports for the refineries who had signed-on to the Backward Integration Programme (BIP). The Committee's visit to Dangote and Bua Sugar refineries revealed that only Dangote has backward integration programme.

That, whereas there is a ban on importation of sugar in retail packs as is currently done in retail packs of fruit juices, noodles, vegetable oils, bagged cement; a company messrs **Meditarion Nigeria Limited** (an affiliate of Milan Group) had consistently flouted the ban and engaged in under invoicing and exceeding ministerial approvals. Suffice to say that this type of sugar is still sold in the market and Nigeria Customs Service has no record of it.

AUTOMOBILE SECTOR:

That approvals by Honourable Minister, Federal Ministry of Industries, Trade and Investments were granted to the under-listed companies to import vehicles without Vehicle Assembly Plants but under concessionary import duty:

- (i) Coscharis Motors to import 897 vehicles in 2015; and
- (ii) Globe Motors to import 714 vehicles in 2015.

That there is this practice of granting waivers to companies without Assembly Plants to import vehicles without payment of import duty and value added tax for vehicles to be used during International meetings/ conferences. The numbers allowed for importation are far in excess of the events requirements. e.g. 2014 World Economic Forum.

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HOSPITALITY/ HOTELS SECTOR:

That Grand Pela Hotels & Suites Limited, Abuja had utilized the concession. Despite two requests made by the Committee, the company failed to respond to the request for information on utilization citing that it was wrongly addressed whereas the address used was the same address in consummating the concession as shown on the approval letter.

That the following companies were granted concessions for the construction of hotels but they failed to respond to the request for information on the utilization:

- (i) A. A. Entertainment and Tourism Ltd, Lagos;
- (ii) D' Palms Airport Hotel Ltd, Lagos; and
- (iii) Victoria Crown Plaza Ltd, Lagos.

That Dona Mario Hotels and Suites Ltd and Stevemec Hotels and Suites Ltd were granted concessions for construction of hotels. However, the locations of the Hotels could not be traced. Information from Corporate Affairs Commission shows the Directors as Mr. Cyriacus Uche Umeh and Mrs. Helen Chibuzo Umeh for both companies.

That the un-derlisted companies were granted concessions:

- (i) Praise Hotel and Water Park Ltd, Lagos.
- (ii) Le Meridien Grand Ikoyi Towers and Resort, Lagos. and
- (iii) Mob/Nech Construction Co. Ltd, Port Harcourt, Rivers State.
- (iv) Prejoy Limited, 17 Okwu Avenue, Aba – Abia State

The locations of the above companies/ hotels could not be traced and search at Corporate Affairs Commission showed no information.

That Nech and World Hotels Limited was granted concessions. All effort by the Committee to trace the location/ the hotel for which concessions were granted was not successful.

That Robert Dyson & Diket Limited was granted concessions. The company cannot be located on the address stated on the approvals for concession i. e 25 Boyle Street, Lagos.

That Noble World Hotels and Suites Limited was granted concessions. In its response to the Committee's request on utilization of concession, the company informed the Committee that it has not utilized the concession.

That AMSSCO Limited was granted concessions. In its response for information on utilization, the company stated that "it subsequently decided not to utilize the concession."

That there was high level of abuse of concessions granted the hospitality sector; out of 57 companies granted concessions only very few complied with the terms of the concession granted namely: Chelsea Hotels Ltd, Sunshine Hotels and Guest House Ltd, Cynergy Suites Ltd, News Engineering Ltd and First Continental Properties Ltd.

RECOMMENDATIONS:

GENERAL

That the institutional weakness that has bedevilled the system should be strengthened by the review of all the relevant laws; Customs and Excise Management Act, Nigeria Export Promotion Council Act, Export (Incentives and Miscellaneous Provisions) Act CAP 118 of 1986 (as amended by the Act, No 65 of 1992), etc.;

That the Federal Government as a matter of urgency should restructure and streamline the functions and responsibilities of the Budget Office of the Federation in such a way that will prevent it from further abuses and excesses in the import duty waivers, concessions and grants process;

That the Federal Government should, in line with international best practices, take appropriate steps to come up with clear-cut policy on import duty waivers, concessions and grants that is transparent;

That the current patronage system that hampers fair economic competition and performance should be stopped;

That the Tariff Board and Tariff Review Technical Committee should be resuscitated to play their statutory role of open and transparent administration of import duty waivers, concessions and grants;

That the Federal Government should ensure that in future, contractors to Federal and State Government's projects should not be enjoying import duty waivers;

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That the Federal Government should address the issue of lack of coordination and collaboration amongst its various Ministries, Departments and Agencies (MDAs) involved in the administration of import duty waivers, concessions and grants;

That totally undeserving firms and companies that illegally enjoyed customs duty waivers, concessions and grants procured through flagrant abuse of executive powers must be made to refund such huge revenue losses to the Federation and appropriate sanctions meted out to them for economic sabotage, e.g. Mc Sally Investment Ltd – got waiver and imported 250,000 metric tonnes of vegetable oil that was detrimental to the economy without being a player in the sector; and Elephant Group - got waiver and imported 100,000 metric tonnes of parboiled rice with zero import duty waiver without being a rice farmer or miller as provided for in the national rice policy;

That going forward, the Nigeria Customs Service should only accept bank indemnity and NOT corporate indemnity to avoid future loss of revenue to the Government.

That the Federal Government should ensure that granting of multiple incentives of import duty waivers, concessions, pioneer incentives and grants all at the same time to the same beneficiaries should be stopped forthwith;

That the Federal Government should impose severe sanctions against companies found to have benefitted from import duty waivers, concessions and grants but at the same time engage in acts of economic sabotage by diverting some vessels to neighbouring countries of Benin and Niger Republics for the commodities to be smuggled into Nigeria through the land borders;

That officials of relevant government agencies such as Budget Office of the Federation and Federal Ministry of Agriculture & Rural Development that carried out due diligence prior to award of waivers, concessions, grants and pioneer incentives to undeserving companies should be sanctioned.

RICE SECTOR

That Olam International Limited, Popular Foods, a subsidiary of Stallion Group, Milan Group should be made to pay the import duty demand notice in the sum of ₦24bn served on them by Nigeria Customs Service for the exceeded quota. Failure to pay should lead to severe sanctions.

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The case of Ebony Agro should be revisited by the Federal Ministry of Agriculture & Rural Development by consolidating the quota of the Ebony Agro and Tara Agro both sister companies.

That the Federal Government should recover the appropriate import duty from the following beneficiaries of the 2014 rice import quota because they did not meet the criteria for granting the waivers:

S/NO	NAMES OF BENEFICIARIES	DUTY DUE TO GOVT.
i.	Dangote Limited	₦1,031,038,848.00
ii.	Kersuk Farms	₦1,927,800,000.00
iii.	Bua Group	₦3,704,126,328.00
iv.	Elephant Group	₦1,501,627,680.00
v.	Golden Penny	₦284,602,399.20
vi.	Milan Group	₦1,855,263,312.00
	Total	₦10,304,458,203.00

That the purported transfer of 100,000mt of rice by JNI to Elephant Group is illegal, therefore, the import duty in the sum of ₦687,496,320.00 only should be recovered from Elephant Group and officials involved in the transaction be sanctioned for economic sabotage as the waiver was meant as charity waiver (donated food stuffs) and not for commercial purpose.

SUGAR SECTOR:

That Bua Sugar Refinery should pay the balance of five per cent import duty and 45 per cent levy for 2013 and five per cent import duty and 65 per cent levy for 2014 - 2015 amounting to thirty-one billion seven hundred and forty-four million four hundred and forty thousand naira (₦31,744,440,000.00) only on importation of raw sugar for obtaining waivers without backward integration programme.

That Meditarion Nigeria Limited should be made to pay the import duty for the excess and under invoicing of 2,161,440 kg of St. Louis cube sugar as at June, 2014 amounting to eighty-two million one hundred and one thousand eight hundred and sixty-six naira ten kobo (₦82,101,866.10) only.

AUTOMOBILE SECTOR:

That the Federal Government should henceforth stop granting waivers for concessionary import of vehicles for international meetings and conferences as it leads to unfair competition. Rather, the locally assembled vehicles should be used for such events to improve local capacity and contribution to the Gross Domestic Product (GDP).

HOSPITALITY/HOTELS SECTOR:

That Government should conduct further investigation on the utilization of the concessions by:

- (i) Grand Pela Hotels Ltd, Abuja - with fictitious address,
- (ii) Robert Dyson & Diket Limited – with fictitious address,
- (iii) A. A. Entertainment Ltd, Lagos – with fictitious address,
- (iv) Dona Mario Hotels & Suites Limited, Lagos – with fictitious address,
- (v) Stevemec Hotels & Suites Limited, Lagos – with fictitious address,
- (vi) D’ Palms Airport Hotel Limited, Lagos – with fictitious address,
- (vii) Victoria Crown Plaza Limited, Lagos – with fictitious address,
- (viii) Praise Hotel and Water Park Limited, Lagos – no information with Corporate Affairs Commission,
- (ix) Prejoy Nigeria Limited, 17 Okwu Avenue, Aba - Abia State – no information with Corporate Affairs Commission,
- (x) Mob/Nech Construction Company Limited, Port Harcourt – no information with Corporate Affairs Commission, and
- (xi) Le Meridien Grand Ikoyi Towers & Resort, Lagos – no information with Corporate Affairs Commission.

That the concession to Noble World Hotels and Suites Limited and AMSSCO Limited be terminated as the companies informed the Committee that they did not utilize the concession.

That all relevant agencies should investigate the illegal process that seems to hamstrung the Nigeria Customs Service from collecting the import duty due from IBETO Group cement importation.

That the Senate do urge the Federal Government to direct the agencies charged with the responsibility of collecting revenues to recover all outstanding revenues from the companies that abused the import duty waivers, concessions, pioneer incentives and grants before the end of this fiscal year.

CONCLUSION:

The Committee had within the resources available to it carried out this assignment diligently and in tandem with legislative best practices.

The Committee sincerely appreciates the leadership of the Senate and distinguished colleagues for the confidence reposed in us by giving us this opportunity to serve.

The Committee is hopeful that if the recommendations are implemented the Federal Government will plug the leakages in the system and increase its revenue.

RECOMMENDATION:

That the Senate do urge the Federal Government to direct Agencies charged with the responsibility of collecting revenues to recover all outstanding revenues from the companies that abuse the Import Duty Waivers Concessions, pioneer incentives and grants before the end of this fiscal year.

Main Question put and agreed to.

The President: Is there any additional recommendation? Distinguished Colleagues, on your behalf I want to thank the *Ad Hoc* Committee led by Senator Aliero for this comprehensive and well investigated Report that we have. They gave details enough to cover the major areas of concern largely to do with abuse of the issue of import duty waivers concession and grants. Particularly issues of where contractors in States and Federal Government that are fully costed for project are still giving waivers. This is totally unacceptable and this must stop immediately.

Also, on deserving firms, they must be made to fully recover the funds. Moreover, as a government and as a serious society that truly wants to show that we have laws that we must obey, those agencies must ensure that every kobo is recovered. Particularly in the area of agriculture, rice and sugar that is affecting backward integration, affecting diversification of economy.

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This is clearly sabotage of our economy and we must ensure that this amount are fully recovered and those involved are sanctioned. Particularly as we see, some of these companies are even foreign companies, we must ensure those things they cannot do in their country is not tolerated in ours. There is easy entrance and easy exit, if they are not ready to abide by our rules I think we should show them the way out and ensure that these are not the kind of companies that should do business here.

We must also ensure that the Committee on Customs, as a follow up should also come back to us to ensure that this recommendation that we all approve are met. It is not just passing these recommendations, after three months we must get a follow up report if not, those agencies involved should be called before the Committee to tell us why some of these recommendations have not been made.

I want to thank you for this very useful Report. I hope that this will go a long way in setting the right standard for this area that have a lot of abuse. Though on good intentions it might have, but unfortunately it has been abused over the years. Thank you.

Resolved: That the Senate do urge the Federal Government to direct Agencies charged with the responsibility of collecting revenues to recover all outstanding revenues from the companies that abuse the Import Duty Waivers Concessions, pioneer incentives and grants before the end of this fiscal year.

Report on Matter of Privilege Raised by Senator George T. Sekibo

Senator Bala Ibn Na'allah: Mr. President, the fourth Order of the Day is the consideration of the Report of the Committee on Judiciary, Human Rights and Legal Matters in respect of Motion on the Difference in the Content of Section 18 of the Armed Forces Act Cap 2A 20 LFN 2004 and 2010 respectively. You will recall that the Report of the Committee was laid on Thursday, 26th April, 2016.

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

Senator David Umaru (Niger East): Mr. President, I rise to move the Motion that the Senate do consider the Report of the Committee on Judiciary, Human Rights and Legal Matters in respect of Motion on the Difference in the Content of Section 18 of the Armed Forces Act Cap 2A 20 LFN 2004 and 2010 respectively.

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Senator Gershom Bassey (Cross River South): Mr. President, I rise to second the Motion so ably moved by Senator David Umaru.

Question proposed.

Senator David Umaru: Mr. President, here is the Report of the Committee.

Background:

The Senate at its Plenary Sitting on Tuesday, 10th November, 2015 considered a matter of privilege raised by Senator George T. Sekibo (Rivers East Senatorial District), pursuant to Rule 14 of the Senate Standing Orders. The matter of privilege borders on the differences in content between Sections 18 of the Armed Forces Act, Cap. A20 editions of the 2004, and 2010, Laws of the Federation of Nigeria, respectively.

These sections deal with the appointment of Service Chiefs by the President and Commander-in-Chief of the Armed Forces. He stated that as a lawmaker, his privilege has been impugned upon by the changes made to the provision without amendment by the National Assembly. For the avoidance of doubt:

Privileges are the rights enjoyed by the Senate collectively and by the Members of the Senate individually conferred by the Legislative Houses (Powers and Privileges) Act Cap. 208, Laws of the Federation of Nigeria. See Rule 14, Senate Standing Orders, 2015, as amended.

He requested the Senate to investigate it. In a nutshell, whereas in the 2004 edition, appointment of Service Chiefs is subject to confirmation by the National Assembly, in the 2010 edition, such confirmation is not required.

After extensive deliberations, the matter was referred to the Senate Committee on Judiciary, Human Rights and Legal Matters, for further legislative action and to report back with its recommendation(s).

Objective of the Referral:

In the Committee's view, the legislative intent of the referral is, firstly, to investigate the differences between Sections 18 Cap. A 20 editions of the Laws of the Federation of Nigeria 2004 and 2010, respectively.

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Secondly, to investigate whether the purported amendment to the provision of section 18 of the Armed Forces Act Cap. A 20, Laws of the Federation of Nigeria 2004 was done by the approval of the National Assembly, and thirdly, whether the 2004 Edition of the Laws of the Federation of Nigeria, was actually revised in 2010 and enabled by the National Assembly.

Methodology:

After the referral, the Committee held several meetings whereby it carefully scrutinised the two versions of sections 18 of the Armed Forces Act Cap. A20 editions of Laws of the Federation of Nigeria 2004 and 2010 respectively. Thereafter, the Committee resolved as follows:

- (1) To seek views of stakeholders, experts and other public officials; and
- (2) To consider any matter that would assist the Committee in the discharge of its assignment.

Committee Action:

Mr. President, Distinguished Colleagues, in furtherance of this referral, the Committee wrote and received comments from the Honourable Attorney General of the Federation and Minister of Justice, the Nigerian Law Reform Commission, Prof. C. O. Okonkwo, SAN, and Festus Keyamo Esq., on the conflict between Sections 18 of the Armed Forces Act Cap. A20 editions of the 2004 and 2010, Laws of the Federation of Nigeria, respectively. For the avoidance of doubt and for the purpose of clarity, the two sections are reproduced hereunder:

- (i) Section 18 Cap. A20 edition of the 2004, Laws of the Federation of Nigeria, provides:

The President may after consultation with the Chief of Defence Staff and subject to confirmation by the National Assembly, appoint such officers (in this Act referred to as the service chiefs) as he thinks fit, in whom the command of the Army, Navy and Air Force, as the case may be, and their reserves shall be vested". (Emphasis ours)

- (ii) Section 18 Cap. A20 edition of the 2010, Laws of the Federation of Nigeria, provides:

The President, may, after consultation with the Minister of Defence, appoint such officers (in this Act referred to as "the service chiefs") as he thinks fit, in whom the command of the Army, Navy and Air Force, as the case may be, and their reserves shall be vested". (Emphasis ours)

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From the provisions of the two versions of the 2004 and 2010 editions of the Laws of the Federation cited above, it is crystal clear that whereas the former mandates the President to submit the nominations for confirmation of appointments of Service Chiefs to the National Assembly, in the latter provision, the requirement for confirmation, was omitted.

The Committee analysed the comments it received from the stakeholders. In their submissions, the Attorney General of the Federation and Minister of Justice and the Nigerian Law Reform Commission, stated as follows:

Firstly, that the omission of the requirement for confirmation of appointment of Service Chiefs of the Armed Forces of the Federal Republic of Nigeria in the 2010 Edition of the Laws of the Federation of Nigeria was enabled by the provisions of the Armed Forces Act Modification Order, s.I.17 of 2008 by the late President, Alhaji Umaru Musa Yar'Adua on 4th August, 2008 in pursuance of his powers under section 315 of the Constitution. In their view, they stated that the modification was done to bring the provisions of section 18(1) in conformity with section 218 of the Constitution.

Secondly, the changes in the text of the 2010 Edition of the Laws of the Federation of Nigeria by the modification order is effective and as such, confirmation of appointment of the Service Chiefs by the National Assembly is not required.

However, Professor C.O. Okonkwo, SAN and Festus Keyamo Esq., expressed different viewpoints from the positions held by the Office of the Attorney General of the Federation and Minister of Justice and the Nigerian Law Reform Commission. They stated as follows:

Firstly, that the 2010 edition of the Laws of the Federation of Nigeria has not been brought into effect by any Act of the National Assembly and as such the 2004 edition, remains the extant Act.

Secondly, the exercise of Presidential powers of modification as contained in section 315(2) of the Constitution of the Federal Republic of Nigeria is unnecessary in this respect as such powers are targeted mainly at legislations that were made under the military era and perhaps to other legislations that are inconsistent with the Constitution.

Apart from the above positions, Festus Keyamo Esq. instituted an action at the Federal High Court; I will come back to this later.

It is apposite at this juncture to state that in the Committee's view, flowing from the submissions of the Hon. Attorney General of the Federation and the Nigerian Law Reform Commission that the change to section 18 Cap. A20 edition of the 2004, Laws of the Federation of Nigeria, was effected through a modification done by the then President of the Federal Republic of Nigeria, Late Alhaji Umaru Yar'Adua, GCFR, on the 4th day of August, 2008 in exercise of the presidential power of modification of existing laws as contained in section 315(2) of the Constitution of the Federal Republic of Nigeria 1999, as amended. It provides:

The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution". (Emphasis ours)

In subsection (4)

(a) Appropriate authority means –

- (i) *The President, in relation to the provisions of any existing Laws of the Federation; (Emphasis ours.)*
- (ii) *The Governor of a State in relation to the provisions of any existing law deemed to be a law made by the House of Assembly of that State; or*
- (iii) *Any person appointed by any law to revise or rewrite the Laws of the Federation or of a State;*

(b) Existing law means – any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date.

As a consequence of the exercise of Mr. President's powers, pursuant to section 315 (2) of the Constitution, the Armed Forces Act Modification Order, s. I. 17 of 2008 was modified to bring section 18 (1) of the Armed Forces Act Cap. A20 Laws of the Federation of Nigeria 2004 into conformity with section 218 of the Constitution of the Federal Republic of Nigeria 1999, as amended. Specifically, section 218 (1) and (2), which deal with command and power to determine the operational use of the Armed Forces, provide –

(1) The Powers of the President as the Commander-in-Chief of the Armed Forces of the Federation shall include power to determine the operational use of the armed forces of the Federation.

(2) The Powers conferred on the President by subsection (1) of this section shall include power to appoint the Chief of Defence Staff, the Chief of Army Staff, the Chief of Naval Staff, the Chief of Air Staff and heads of any other branches of the Armed Forces of the Federation as may be established by an Act of the National Assembly".

Based on the modification to section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria 2004, vide modification order, s.I.17 of 2008 by the late President, Alhaji Umaru Musa Yar'Adua on 4th August, 2008 in pursuance of his powers under section 315 of the Constitution, the Presidency announced the appointment of Service Chiefs for the country on August 20, 2008 'with immediate effect'. The appointment 'with immediate effect', of Service Chiefs in August, 2008 therefore means that the requirement of confirmation by the National Assembly was discarded, which further amplified and give effect to the modification order, s.I.17 of 2008. It was as a result of this modification that section 18 was purportedly revised in the 2010 edition of the Laws of the Federation of Nigeria, wherein lies the difference.

After the appointment, Festus Keyamo Esq., aware of the requirement of confirmation by the National Assembly, protested to the Leadership of the National Assembly and at other fora, as well, for violation of the Constitution. Because his protestation was not heeded, he instituted an action through an originating summons, which was subsequently amended at the Federal High Court in Suit No. FHC/ABJ/CS/611/08 *Festus Keyamo v The President of the Federal Republic of Nigeria, the Attorney General of the Federation and Minister of Justice and 3 Others*; whereby he submitted two questions for determination and sought five reliefs upon the determination of the questions:

- (1) Whether by the combined interpretation of section 218 of the Constitution of the Federal Republic of Nigeria 1999, as amended and section 18 of the Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria 2004 that the appointment of Service Chiefs can be made without the confirmation of the National Assembly first sought and obtained; and

- (2) Whether section 18 (1) and (2) of the Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria is not in conformity with the provisions of the 1999 Constitution so as to fall within the category of existing laws under section 315 (2) of the Constitution of the Federal Republic of Nigeria 1999, as amended in which the President may by an order modify its text, to bring it into conformity with the provision of the Constitution.

And the reliefs sought by the plaintiff are also spelt out in the originating summons as follows:

- (1) A DECLARATION that the appointment of Service Chiefs for the Federal Republic of Nigeria, (that is the 3rd, 4th and 5th Defendants who were purportedly appointed as such) by the 1st Defendant on Wednesday, August, 20, 2008, without the confirmation of the National Assembly is illegal, unconstitutional and void.
- (2) A DECLARATION that section 18(1) and (2) of armed Forces Act, Cap. A20 Laws of the Federation of Nigeria, 2004 is in conformity with the provisions of the 1999 Constitution so as to fall within the category of existing Laws under section 315(2) of the Constitution of the Federal Republic of Nigeria, 1999 that the President, may, by order, modify its text, to bring it into conformity with the provisions of the Constitution.
- (3) AN ORDER nullifying and/or setting aside the Armed Forces Act modification order, 2008 (No. 50) published in vol. 95 of the Federal Republic of Nigeria Official Gazette dated 29th August, 2008, and the appointment of the 3rd, 4th and 5th Defendants as Service Chiefs of the Armed Forces of the Federal Republic of Nigeria, on Wednesday, 20th August, 2008.
- (4) AN ORDER restraining the 1st Defendant from further appointing Service Chiefs for the Federation without first obtaining the confirmation of the National Assembly.

Accordingly, the Court held as follows:

1. *That the declaration of the appointment of the Service Chiefs of the Federation by the President of the Federal Republic of Nigeria, without the confirmation of the National Assembly is illegal, unconstitutional and void;*

2. *That Section 18 (1) and (2) of the Armed Forces Act Cap. A20 LFN 2004 is in conformity with the provision of the 1999 Constitution, as amended and it does not fall within the existing law under section 315 (2) of the Constitution, which stipulates that the President may by order, modify its text to bring it into conformity with the provision of the Constitution; and*

3. *An order was made nullifying and/or setting aside the Armed Forces Modification Order, 2008 (No. 50) published in Vol. 95 of the Federal Republic of Nigeria Official Gazette dated 29th August, 2008; and*

4. *An order was made restraining the President from further appointing Service Chiefs for the Federation without first obtaining the confirmation of the National Assembly.*

Furthermore, even though the President has duly exercised such power of modification, as contained in section 315(2) of the Constitution, the 2010 Edition of the Laws of the Federation of Nigeria has not been brought into effect by an Act of the National Assembly, as such the provision of section 18 Cap. A20 2004 Edition of the Laws of the Federation of Nigeria remains the extant law.

To this end, it is the concerted view of the Committee that section 18 of both the 2004 and 2010 Editions of the Laws of the Federation of Nigeria vis-à-vis the decision of the Federal High Court in *Festus Keyamo v the President and 4 ORS* (Supra) as well as the provisions of section 218 and 315(2) of the Constitution of the Federal Republic of Nigeria 1999, as amended, there is nothing unconstitutional in having the National Assembly confirms the appointment of Service Chiefs. Similarly, section 315 (2) appears to be directed mainly at legislations, made under the Military era and perhaps to other cases of obvious inconsistencies. As such, the contemplation of that provision is not intended to undermine the legislative powers of the National Assembly or to invest the Executive with legislative powers.

This now brings us to the second issue, that is whether the purported amendment to section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria 2004 was done by the National Assembly. The answer to this question is simply No. Available records from 2004 to date, show that the National Assembly (either in the Senate or the House of the Representatives), has never amended section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria 2004.

Therefore, it is our concerted view that the change to the text of section 18, which was purportedly revised in the 2010 Edition of the Laws of the Federation of Nigeria was as a result of the modification order, s.I.17 of the 2008 by the late President, Alhaji Umaru Musa Yar'Adua on 4th August, 2008 in pursuance of his powers under section 315 of the 1999 Constitution, as amended. (This issue relating to modification order has been sufficiently addressed in the early part of this report and resolved as not being one of the laws contemplated by section 315 (2) as inconsistent to have been modified).

Finally, on the issue of whether the 2004 Edition of the Laws of the Federation of Nigeria was actually revised in 2010 and enabled by the National Assembly. The answer is that, there is no such revision known to the National Assembly as the 2010 Edition has not been enacted by the National Assembly.

However, we have found out, as a matter of fact, that there is a standard procedure for revising Laws of the Federation of Nigeria and how to bring them into effect. These standards are set out in the preface to the 2004 Edition of the Laws of the Federation of Nigeria. This edition was also actually given effect to by an Act of the National Assembly in 2007. The objective, of course, is to bring together an up-to-date set of duly revised Laws of the Federation of Nigeria.

Firstly, the process of revision and updating Laws of the Federation is a tasking exercise, which requires concentration. Because the process is tasking, it became the objective of the Federal Ministry of Justice that the Laws of the Federation shall be revised after every decade. In the Committee's view, laws revised in 2004 could not have met the requirement of Ten Years period in 2010. And because the level of commitment and concentration required in the process was not adhered to, the 2010 edition suffers many defects of its own as errors of commission or omission, abound in that purported edition.

Secondly, because of the important nature of the exercise, a Law Revision Committee is usually constituted by the Attorney General of the Federation and Minister of Justice to, among other things, make the usual omissions to include omission of repealed and spent statutes, preamble unless necessary, enacting clauses, amending statutes, effecting consolidation of statutes where necessary and making consequential alterations as are necessary to bring relevant Acts into conformity with the Constitution or circumstance of democratic structure of government. In our tacit opinion, such committee would not have been constituted without regard to the requirement of Ten Years cycle set by the Ministry. Again, the many errors of production could have been avoided if such a body was constituted.

Finally, that a Bill to enable effect to be given to the Revised Edition to the Law of the Federation of Nigeria must be sent to the National Assembly; otherwise such compendium of our laws will not form part of our statute law. It is the view of this Committee, flowing from available records, that the only bill to give effect to the Laws of the Federation of Nigeria was enacted by the National Assembly in 2007.

Observation:

The Committee hereby observe as follows:

- (1) That section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria is hardly adhered to, as very often, nominees usually assume duties before confirmation;
- (2) That the National Assembly is the only arm of government vested with powers to make laws for peace, order and good governance of the country pursuant to section 4 (1) of the 1999 Constitution, as amended;
- (3) That there are differences in content between sections 18 Cap. A20 LFN 2004 and section 18 Cap. A20 LFN 2010, deal with the requirement of confirmation of appointment of Service Chiefs by the National Assembly;
- (4) That there is nothing unconstitutional in having the National Assembly confirm the appointments of Service Chiefs of the Federation from the combined interpretations of sections 218 and 315(2) of the Constitution of the Federal Republic of Nigeria 1999, as amended;
- (5) That the 2010 edition of the Laws of the Federation of Nigeria has not been brought into effect and currently has no position among legally recognised statutes; and
- (6) That there is a subsisting judicial pronouncement by a Court of competent jurisdiction in *Festus Keyamo Vs The President & 4 Others (supra)*, which declared the modification illegal, unconstitutional, void and of no effect whatsoever; and
- (7) That section 18 Cap. A20, Laws of the Federation of Nigeria 2004 was amended without resort to the National Assembly.

Findings:

Taking into consideration the above-mentioned observation, and having regard to the views canvassed by various stakeholders, we hereby make the following findings:

- (1) That henceforth, nomination of Service Chiefs or any other nomination in that regard that requires the confirmation by the National Assembly or of the Senate, pursuant to the provisions of the Constitution of the Federal Republic of Nigeria 1999, as amended, should be given effect to;
- (2) That the provision of section 18 Cap. A20 of the Laws of the Federation of Nigeria 2004 is still effective and remains the extant law and 2010 edition, having not been properly revised and enabled by the National Assembly and declared to be a nullity by a Court of competent jurisdiction, should be withdrawn from circulation;
- (3) That the confirmation of appointments of Service Chiefs of the Federal Republic of Nigeria is mandatory in line with section 18 Cap. A20, Laws of the Federation of Nigeria 2004;
- (4) That the decision of the Federal High Court in *Festus Keyamo vs the President and 4 Others (supra)* still subsists and it remains the judicial precedent, as it has not been appealed against nor set aside;
- (5) That the Parliament must be seen to respect and take legislative notice of and uphold any law relating to national legislation, constitutional provision and judicial pronouncements, made by Court of competent jurisdiction in matters affecting the nation;
- (6) That section 315 (2) is not intended to undermine the legislative powers of the National Assembly or to invest the Executive with legislative powers; and
- (7) That the amendment to section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria 2004, impugned upon the privilege of Senator George T. Sekibo, as a Senator and collectively, privileges of other Senators of the Federal Republic of Nigeria and by extension that of Nigerians, they represent.

Recommendation:

The Senate Committee on Judiciary, Human Rights and Legal Matters, to which was referred, a matter of privilege raised by Senator George T. Sekibo, pursuant to Rule 14 of the Senate Standing Orders on the provisions of sections 18 Cap. A20, Laws of the Federation of Nigeria 2004 and 2010 respectively, having carefully and critically examined the matter, hereby recommends as follows:

- (1) That the Senate do disregard the provision of section 18 Cap. A20, Laws of the Federation of Nigeria 2010 and the National Assembly shall continue to confirm the appointments of Service Chiefs of the Federal Republic of Nigeria in line with the provisions of section 18 Cap. A20, Laws of the Federation of Nigeria 2004 as it still remains the extant law;
- (2) The Hon. Attorney General of the Federation and Minister of Justice in whose purview resides the power to initiate revision of the Laws of the Federation of Nigeria, should take necessary steps to withdraw from circulation 2010 Edition of Laws of the Federation of Nigeria, having not been properly revised and enabled by the National Assembly in view of the decision of the Court in the case of *Festus Keyamo v the President and 4 Others (supra)*; and
- (3) That the Executive should submit to the National Assembly all nominations that require the confirmation of the National Assembly or of the Senate, pursuant to the Constitution of the Federal Republic of Nigeria 1999, as amended, for confirmation before such nominees assume duties.

Conclusion:

We wish to thank the President of the Senate and indeed our distinguished colleagues, for the opportunity to offer clarification on this matter. It is our hope that we shall continue to serve you and the country whenever we are called upon to do so. Thank you.

The President: Thank you; we will go straight to the Recommendations.

- (1) That the Senate do disregard the provision of section 18 Cap. A20, Laws of the Federation of Nigeria 2010 and the National Assembly shall continue to confirm the appointments of Service Chiefs of the Federal Republic of Nigeria in line with the provisions of section 18 Cap. A20, Laws of the Federation of Nigeria 2004 as it still remains the extant law –

Question proposed.

Senator Bala Ibn Na'allah: Mr. President, recommendation (1) says; that the Senate do *disregard* the provision of section 18 Cap. A20, – I think that word *disregard* is so strong. It would rather be more parliamentary if we render it thus:

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Section 18 Cap. A20, Laws of the Federation of Nigeria does not in any way affect the powers of the National Assembly to confirm the appointment of Service Chiefs of the Federal Republic of Nigeria in line with the provision of 18 Cap. A20 Laws of the Federation of Nigeria (2004) as it still remains the extant law.

Senator Barau I. Jibrin (Kano North): Mr. President, I stand to second the amendment to recommendation (1) as proposed by the Deputy Leader.

Amendment put and agreed to.

2. The Hon. Attorney General of the Federation and Minister of Justice in whose purview resides the power to initiate revision of the Laws of the Federation of Nigeria, should take necessary steps to withdraw from circulation the 2010 Edition of Laws of the Federation of Nigeria, having not been properly revised and enabled by the National Assembly in view of the decision of the Court in the case of Festus Keyamo vs the President and 4 Others (supra).

Question put and agreed to.

3. That the Executive should submit to the National Assembly all nominations that require the confirmation of the National Assembly or of the Senate, pursuant to the Constitution of the Federal Republic of Nigeria 1999, as amended, for confirmation before such nominees assume duties.

Question put and agreed to.

The President: If there is no additional recommendation, I want to thank the Chairman of the Committee, Senator David Umoru and the members for their report. Thank you so much.

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Resolved:

Recommendation 1 – *as amended, agreed to.*

Recommendation 2 – *agreed to.*

Recommendation 3 – *agreed to.*

Suspension of other Items on the Order Paper

Senator Bala Ibn Na'allah: Mr. President, I move that we stand down all other items on the Order Paper till the next Legislative Day.

Senator Emmanuel Bwacha (Taraba South): Mr. President, I second the motion moved by the Leader.

(By the leave of the Senate, other items on the other paper stood down to another Legislative Day.)

ADJOURNMENT

Senator Bala Ibn Na'allah: Mr. President, having exhausted the items on the Order Paper for the day, I move that this distinguished Senate do now adjourn till Wednesday, 25th May, 2016 at 10.00 a.m.

Senator Emmanuel Bwacha: I second the Motion as moved by the Leader.

Question put and agreed to.

And it being 2.37 p.m. the President adjourned the Senate without Question put pursuant to Standing Rule 13 of the Senate till Wednesday 25th May, 2016 at 10.00 a.m.