

Examining the Repeal and Enact Bill of Nigerian Railway Corporation Act CAP N129 LFN 2004, 2015 (SB 001): Issues and Policy Options

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Abstract

Nigeria's rail system suffered serious neglect to the extent of becoming comatose due mainly to lack of credible legal and policy frameworks to confront the challenges of rail transport in the 21st century. A repeal and enactment bill CAP N129 LFN 2004, 2015 (SB. 001) which tries to revitalize the sector and improve operational frameworks via removal of past impediments may likely suffer the mistakes of the past without an articulate provisions that is expected to move the sector to the next level. This paper attempts to analyze the provisions of the Bill using the SWOT analysis principle and lessons from other jurisdictions, with the quest to strengthen the Bill and layout some policy outputs. An examination of the bill shows that though the provisions are concise and coherent; a little need to be done in terms of better concessionary practices and removal of some hanging institutional and socio-political issues to address the transformation of the rail system towards better practices and sustainability for public good.

Key words: Act, Bill, Nigerian Railway Corporation, Policy options

Introduction

Few years ago, a bill for an Act to Repeal the Nigerian Railway Corporation Act CAP N129 Laws of the Federation of Nigeria - LFN 2004 and to Enact the Nigerian Railway Corporation Act 2015 for efficient and effective railway system in Nigeria and other Related Matters numbered 2013/ SB. 329/ C1445-C1499 was sponsored by a Senator to reposition railway transportation in the country (Nigerian Railway Corporation Bill, 2015); however, little was done by analyst to scrutinize and sharpen this bill for public good. It is well known that the developed countries of the world cannot be where they are today if not for their developed rail systems. This is because railway transportation offers the much-desired benefit for economic prosperity and development due to its potential for economic advancement and relative safety, reliability, lower cost to the users and being singularly capable of transforming the national economy through mass movement of people, goods and services.

The Nigerian Railway Corporation (NRC) was established by an Act of Parliament in 1955 as amended for the main purpose of carriage of passengers and freight in a cost-effective manner (Akwara et al, 2014). Despite this, the Nigerian rail traffic base and the quality of railway assets and train services were at a point in time eroded to the extent of a non-operational

situation or almost comatose. This was considered to be as a result of government interference with the management structure of the railway sector, limited scope of the former NRC Bill in terms of membership and private sector representation, unorganized membership structure in the NRC board, inflexible or bureaucratic issues, underfunding as a result of global budgetary shortfalls, etc. which has resulted in repeated failure of NRC to effectively and efficiently maintain the railway system in Nigeria and provide adequate training or capacity for staff in the railway sector so as to join the global trends (Nigerian Railway Corporation, 2015).

The demand for an effective railway system and the enormous potentials for profitable investment in rail infrastructure in Nigeria through concession arrangement are indisputable. However, a recent development indicates government interest to revamp the sector and put it on a right footing towards the economic development of the country. Consequently, the Bill for an Act to repeal the Nigerian Railway Corporation Act CAP N129 Laws of the Federation of Nigeria 2013 and to enact the Nigerian Railway Corporation Act 2013 for efficient and effective railway system in Nigeria and other Related Matters sets out the legal and institutional framework for concessions in the railway sector taking into account the break away from poor management style of the 'business as usual tradition' or public red tape, to the transfer of responsibility to the private sector to be achieved through open competition and in line with best international practices towards efficient rail transport services and value for money. Specifically, the bill sets out to streamline the Board membership of the Nigerian Railway Corporation (NRC); and make provisions for infrastructure concession arrangement within the railway system. The Bill consists of 16 parts which are divided into 102 sections; parts 1 to 5 are concerned with the establishment of the NRC, its objectives, functions and powers, appointment of general manager and other staff. Parts 6 to 12 make financial provisions and provide for the appointment of the inspector of railways, workings of the railway including its rules, bye-laws and sanctions, carriage of goods and passengers and tasking the corporation with responsibility as carriers and warehousemen and make provisions for tariffs. And, parts 13 to 16, make provisions for accidents, offences and penalties, legal proceedings and miscellaneous issues.

This paper examined the basic provisions of the bill taking into consideration the major issues raised by the proposed law and provides options towards value addition to the current efforts to uplift the railway sector for good. The options are mainly for strengthening numerous policy proposals and legislative actions that seek to revamp the railway sector towards the expansionist drive and modernization of the Nigerian Railways for public good.

Evolution of Railways

Rail transportation, also known as train transportation, could be said to have commenced in the mid- 16th century in Germany in the form of horse powered funiculars and wagon ways. Modern rail transport commenced with the British development of the steamlocomotives in the early 19th century. The railway system in Great Britain is the oldest in the world; built by George Stephenson and his son Robert Company (i.e. Robert Stephenson and company). The

locomotion No.1 is the first steam locomotive to carry passengers on the public rail line, the Stockton and Darlington in 1825. George also built the first public intercity railway line in the world to use only the steam locomotives all the time, the Liverpool and Manchester Railways which opened in 1830, with steam engines as a key component of the Industrial Revolution. Railway reduced the cost of shipping and allowed for fewer lost goods compared with water transport which faced occasional sinking of ships. The spread of the railway network and the use of railway timetables, led to the standardization of time (Railway time) in Britain based on Greenwich Mean Time. The invention and development of the railway in the United Kingdom was one of the most important technological inventions of the 19th century.

The first world's underground railway, the Metropolitan Railway (part of the London Underground), opened in 1863. In the 1880, electrified trains were introduced, leading to electrification of tramways starting during the 1940s. The non-electrified railway in most countries had their steam locomotive replaced by diesel electric locomotives, the process being almost complete by the year 2000. During the 1960, electrified high-speed railway systems were introduced in Japan and later in some other countries. Many countries are in the process of replacing diesel locomotives with electric locomotives. Intercity trains are long-haul services connecting cities; modern high-speed rail is capable of speeds of up to 350 km/h, but this requires specially built tracks (Wikipedia).

Rail Development in Nigeria

The development of the Nigerian Railway (NR), started in 1895, and it constituted one of the cornerstones of British imperialism in Africa and colonial Nigeria. According to Nigerian Railway Corporation report in 1965, from the time of establishment and well into the postcolonial period, the Nigeria Railway was the largest employer of labor in the colony; and by the mid-1970s it had more than 30,000 staff. Without the construction and development of the Nigeria Railway system, it would have been virtually impossible to bring together the many and different parts that now constitute the present-day Nigeria. It is therefore apparent that the history of the Nigeria Railway is also that of Nigeria; without one the other would not have been possible (Tekano, 1965).

Osunbote (1997) asserts that the first railway line in Nigeria was constructed between 1898 and 1901, making the railway system the oldest means of modern transportation in the country. Although initiated by private companies, the system was later taken over by the government. Since the completion of the first rail line, which spanned 193km, between Lagos and Ibadan in 1901, railway construction in Nigeria has continued to expand from one region of the country to the other. About 3212 kilometers of rail network had been constructed in the country over the century between 1898 and 2006, which invariably mean an average of 3.2 kilometers per year (NRC, 2006). However, track and route kilometers sum up to over 4300 and 3500 respectively. It is worthy to note that there was consistent rail construction from 1898 to 1927, until the return to democratic era in 1999 when effort towards resuscitating the now comatose rail corporation was initiated by the administration of Chief Olusegun Obasanjo and the effort was sustained by the successive administrations that followed until now.

Majority of the country's rail lines were constructed during the colonial period. At that time, the driving motive was the need to link Northern Nigeria to the Southern part for ease of movement of mineral and agricultural resources required for the development of Great Britain (Osunbote, 1997). It is therefore not surprising that the nation's rail system in Nigeria is in a general state of disrepair and neglect after colonialism; though, one cannot rule out corruption and neglect on the part of past governments as major cause of the setbacks witnessed in the sector despite its centrality to development.

In its determination to revive and modernize the Railway sector, the Federal Government adopted a 25-year Strategic Vision, which spanned from 2002 to 2027. The vision entails the rehabilitation of the entire existing narrow gauge lines simultaneously with the development of standard gauge lines which the administration of President Muhammadu Buhari has been pursuing vigorously with the completion of the Itakpe – Ajaokuta – Warri Standard Gauge and commencement of operations in August, 2018, construction of Abuja (Idu) – Kaduna Standard gauge is concluded and commercial operation has commenced with a flag off and commissioning by President Muhammadu Buhari in July, 2016. Construction of Lagos – Ibadan Standard Gauge (double track) 2 x 180km has been awarded and near in completion with an addendum to extend the track to Apapa Sea port complex. Such a giant moves to revamp the sector cannot be easily actualized without a coherent structural construct in terms of legislation or policy inputs to support states efforts which this paper attempts to undertake. As the practice in using legislative instruments to project policy or policy documents to project legislation, the paper finds it important to critically appraise the relationship between the bill and other legal instruments towards development-oriented legislation or policy inputs that can stand the taste of time.

Relationship of the Bill with Existing Laws

There is little in a bill that negates other legislations or touches or overrides other laws of the land. This therefore makes it imperative for one to examine the relationship of the bill with existing law so as to assess its viability or implications on plethora of legislations that support the wellbeing of the society. This is especially so when one considers the grand norm or constitution; as any legislation that infringes on the constitution stands null and void. The bill is in line with the legal framework for the operation of infrastructure concessions in Nigeria which is principally the Infrastructure Concession Regulatory Commission (Establishment) Act 2005 and the Public Procurement Act 2007. These laws have set out the requirements for competition and private sector participation in all public procurement as well as specify requisite approvals for all Public Partnership Projects (PPP) and contracts.

Under the ICRC Act 2005, the scope of opportunities for investment in infrastructure in Nigeria exists in virtually every sector of the economy including the railway sector. Part 1, Section - (1) of the Act clearly states that 'As from the commencement of this Act, any Federal Government Ministry, Agency, Corporation or body involved in the financing, construction, operation or maintenance of infrastructure, by whatever name called, may enter into a contract

with or grant concession to any duly pre-qualified project proponent in the private sector for the financing, construction, operation or maintenance of any infrastructure that is financially viable or any development facility of the Federal Government in accordance with the provisions of this Act' (ICRC Act, 2015).

Part (2) of the Act stipulates that 'This Act applies to investment and development projects relating to any infrastructure of any Federal Government ministry, agency, corporation or body'. Part 2, Section - (1) States that 'Every Federal Government Ministry, Agency, Corporation or body shall prioritize its infrastructure projects and such priority projects may be qualified for concession under this Act'. Therefore, the Bill is in line with the provisions of the ICRC Act 2005. In the same vein, the Bill is consistent with the National Transport Policy which aims to "encourage private sector participation in the provision of rail services".

The above attest that this bill is healthy for consideration by the Nigerian parliament and does not infringe on the constitution of the Federal Republic of Nigeria. However, it is closely related to the Infrastructure Concession Regulatory Commission (ICRC) Act or the ICRC Act gives a solid foundation to the actualization of the basic provisions of the bill. Therefore, it stands out to be in tune with the law of the land and possesses little or no danger to public good. However, some aspects that concerns the allocation of land which may likely be affected by the Land Use Act stands out as the major constraints of the Bill relationship with existing law.

Examining the Strength, Weakness, Opportunities and Threats (SWOT) of the Bill

The paper adopts the SWOT analysis methodology to understand the positive and negative effects of the Bill. The SWOT methodology is useful in examining a Bill as it can easily analyze the strengths, weaknesses, opportunities, and threats of a proposed legislation. This helps to build on how the Bill will do well to address what is lacking, minimize risks, and to take the greatest possible advantage of chances for success taking into cognizance the threats and opportunities of the legal instrument. Above all, it gives a good backing to fall out in policy issues by providing options or alternatives. An examination of the Bill shows that it is concise and coherent which can as well be considered to be good in drafting style. The strengths, weaknesses, opportunities and threats (SWOT) are hereby outlined to appreciate what it has to offer in the quest to support developments in the railway sector.

Strengths of the Bill

I. The bill is a (repeal and enactment) one, hence carries little or no burden on the financial purse of the country. Above all, the transport sector (especially the rail sector) is a huge employer of labor and reviving the country's railway sector is a step towards reducing the high rate of unemployment whose attendant consequences can be seen in the high level of insecurity in the country.

II. The bill provides a base for entrepreneurship development or private sectors led growth through returns from concessions and entice competitive investors'

participation (i.e. Foreign Direct Investments - FDI) which is the vision of the country's transformation agenda.

III. The enactment of the bill would boast social integration in the country, through the increase in movement of persons and goods and; also, enhance small scale business in the country since rail transport improves the movement of persons and goods at minimal cost.

Weaknesses of the Bill

I. Section 2 (3) (d) of the Bill stipulates a representative of the labor unions as a member of the Governing Board without being specific on who amongst the labor unions, as lots of labor unions exist in Nigeria.

II. The Bill fails to stipulate the requisite skill needed for each representative of the geo-political zones to serve on the board of the NRC, taking into cognizance that concession processes are technical in nature.

III. The case of alcohol sale and consumption on carriages may affect the degree of support to the concession process of the Bill, taking into consideration the reactions it may generate from Faith Based Organizations (FBOs)

IV. Finally, the Bill was silent on major challenges that may emanate from the failure to comply with provisions of concessions such as damage to passengers' goods, corrupt practices by managing firms, etc.

V. Quality service may be achieved through concessions but the quality and bodies that will serve on the board of the Nigerian Railway Corporation was salient in the Bill e.g. persons with requisite experience/skills that will add value to the railway sector; e.g. civil & electrical engineers, the National Institute for Transport Technology (NITT) Zaria, etc.

Opportunities of the Bill

I. The Bill has the potential to create opportunities for investment in manpower which can lead to continuity and longevity through career development/technology transfer in the railway sector. As part of the concession process, there should be clearly set out guidelines for these and a railway research and development unit can be established for this purpose.

II. The Bill provides the opportunity for private rail operators to be accountable and reap the dividends of their efforts. This can be done by strengthening concessionaires' contractual, financial and operational information disclosure requirements, strengthening the regulatory body's capacity as well as imposing annual independent financial and operational audits as part of concession contracts.

III. Section 10(j) of the Bill provides that "the NRC can enter into infrastructural concession agreement with any individual, corporate body or organization". Hence, the

Bill can take advantage of the several types of contractual obligations that are available under infrastructure concession contracts. These are based on the nature and extent of the risk transferred from the public agency to the private concessionaire and includes the Build, Operate and Transfer (BOT), Build, Operate and Own (BOO), Build, Transfer and Operate (BTO), Build, Own, Operate and Transfer (BOOT), Design, Build, Finance, Transfer (DBFT), and Design, Build, Finance, Manage (DBFM), etc. The Bill should have been specific about the direction to take as above.

Threats of the Bill

I. Section 10(k) of the Bill allows the sale of alcohol beverages on railway premises and carriages. This may not go down well with some groups e.g. FBOs or persons who are against alcohol intake. It will serve better if the Bill is silent on the sale of alcohol beverages on carriage so as not to elicit tension or reaction from the populace or divert the attention of the public from the substance of the Bill.

II. Part IV section 2 of the Bill may likely be subjected to court action going by the fact that the Land use Act, 1978 section 2 provides that land under the state is subject to approval of State Governors. That is land within states cannot be used without the approval of State Governors. And, any amendment to the Land use Act requires a constitutional amendment to have effect.

Lessons from Other Jurisdictions

It is imperative to examine other jurisdictions so as to leverage on their experience towards a better understanding of the Bill. The table below presents a highlight of concession arrangements made in the railway sector for 3 countries and the composition of board membership in their railway commissions.

Table 1: Cross-Country Experience

Country	Factors Responsible for Effectiveness and Efficiency
Japan	Dividing the business into appropriate sizes for each company, Creating mutual competitive consciousness between all operators, Elimination of interference or reduction of government involvement, Business diversification for improved corporate profits Flexibility in the business activities.
United States	Rail traffic has remained relatively stable after 1980

	<p>Customer service levels have increased,</p> <p>Labor and physical assets of rail companies have increased dramatically</p>
Britain	<p>The most obvious success of the railway has been passenger growth and freight growth.</p> <p>Significant private sector investment in new trains and passenger facilities, etc.</p> <p>Improvements in quality and availability of services with passenger satisfaction rising yearly and passenger growth of over 50% over ten years.</p>

Source: Compilation by Author

From the above, one can easily deduce that concession arrangements have been used to develop large transportation infrastructure networks for railway systems in most developed rail systems across the globe. This is evident from the above examples i.e. the United Kingdom, Japan, United States of America etc. Therefore, the Bill is consistent with common practices in other countries of the world. Collier (2011) noted that while America is a huge landmass, with a relatively low population density, yet it has one-kilometer track for every 43 square kilometers of land. Nigeria, on the other hand, is reputed to have about one-fifth of the sub-Saharan African population and also one of its most densely populated countries yet, its rail-spread is one kilometer of rail for every 262 square kilometers. It is, therefore, not surprising that the volume of socio-economic activities is greater in America than Nigeria (Akwaru, et al, 2014).

Options for Durable Framework

Lessons from the above indicate that lots can be achieved in matters of policy or legal framework to move the railway sector to the next level. This is because with an effective and efficient rail system, there will be little pressure on our roads and lots of the rural populace will find it easy to move across the hinterland thereby promoting integration and boosting businesses, alongside reducing the pressure of rural – urban migration or stay out of the poor in shanty towns at the outskirts of the cities. However, as the bill gets down the ladder of success to touch on the lives of the citizenry, there is the need to consider the following:

1. The Bill should adopt or be specific on any suitable of the several types of contractual obligations that are available under infrastructure concession contracts. E.g. the Build, Operate and Transfer (BOT), Build, Operate and Own (BOO), Build, Transfer and Operate (BTO), Build, Own, Operate and Transfer (BOOT), Design, Build, Finance, Transfer (DBFT), and Design, Build, Finance, Manage (DBFM), etc.

2. There should be an arrangement that gives the labor unions a central place in the transformation of the rail system. This is to allow for check and balances or accountability against the abuse of labor

3. Provision of basic infrastructure at all major train stations so as to further enrich the development of communities along the rail routes.
4. There is the need to create a provision in the bill that will give the state government (i.e. governors) a sense of belonging in the transformation of the rail system so as to neutralize any challenge that may emanate due the provisions of the Land Use Act.
5. The bill should focus on the main substance of its provisions which deals with the modernization or transformation or privatization of the railways towards effectiveness and efficiency than indulging into matters of the sale of alcohol beverages on carriage so as not to divert the attention of the public from the substance of the proposed legislation.
6. The government should ensure that frameworks for the processes that govern the sector are sanctioned with a high degree of transparency and best lessons from other jurisdictions.
7. Lastly, the legislature or government's oversight function should be friendly, business minded or revenue based towards a viable rail system.

Conclusion

The repeal and re-enactment of the Nigerian Railway Corporation Act CAP N129, LFN 2004, 2015 (SB. 001) is surely one of the landmark mechanisms towards the revitalization and enhancement of the rail system for better service delivery. The proposed legislation provides an appreciable operational framework and removal of the impediments that hindered the major setbacks of the railway business in Nigeria. The Bill is very crucial to the modernization and privatization of the rail transport of the country. It will not only usher in a new era of growth, but will ensure the effectiveness and efficiency, alongside sustainability of the rail system towards mitigating the numerous failures of the past.

It will change the outlook of our rail system and support the transformation of the economy in many respects. However, efforts must be made to check the excesses of officials in terms of corruption, bureaucratic red-tape, multiple taxation, financing gaps, abuse of the ease of doing business especially for foreign investors, ensure a concession agreement that will enhance vibrant private sector participation via healthy competition, etc. Precisely, issues such as weak implementation and enforcement of institutional and legal framework, technological constraints, political and social factors, among others should be vigorously addressed towards a viable rail sector for Nigeria.

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