REVIEW OF RELEVANT INFORMATION ON NIGERIA'S DEMOCRACY

PLAC
POLICY AND LEGAL ADVOCACY CENTRE

BILL ANALYSIS

No.1, 2016

# National Roads Fund Bill, 2015

## OBJECTIVES

The objectives of the Bill are as follows: -
The Bill seeks to:

- Establish the Roads Fund, which shall be a repository for revenues accruing from road user charging systems and other sources for the purpose of financing the maintenance and upkeep of national roads and promote sustainable development of the road sector;
- Establish the National Roads Board, which shall be responsible for the management of the Roads Fund in accordance with the provisions of the Bill;
- Promote the sustainable development and operation of the road sector

## APPLICATION OF THE BILL

The provisions of this Bill shall apply to the development, rehabilitation, reconstruction, maintenance and funding of the national roads network.

## IMPLICATION AND CONSEQUENCE OF THE BILL

1. **Establishment of the National Roads Fund:**
   The Bill seeks to establish a Roads Fund to serve as a repository for revenues accruing from roads use and other sources for the maintenance of national roads. The Fund shall be a body corporate capable of holding, purchasing, acquiring and disposing of property for the purpose of carrying out its functions.

   The Bill further provides that each year up to 3% of the total monies accruing to the Fund in the preceding year before disbursement, be used for the management and administration of the Roads Fund. In effect, the cost of running the Fund and other ancillary will be paid for, from the accruals to the Fund.

2. **Sources of Roads Fund: -**
   Clause 4 lists the sources to include 5% of user's charge on pump price of petrol and diesel received from petroleum products as required to meet the routine and periodic road maintenance needs; grants and loans to the Road Fund by the Federal, State or Local government, statutory corporations, any international organization; private foundation or person; gifts of land and money.

   The issue to grapple with is the calculation of the 5% user charge on pump price of petrol and diesel. This could be a 5% charge per liter of petrol or diesel per buyer, which goes to seller for further remittance to the Fund or an additional charge to the buyer for the purchase of petrol or diesel.

3. **Disbursement of the Administrative Fund: -**
   Clause 3(3) of the Bill requires that up to 3% of the accruals be set aside for the administration of the Fund, payment of allowances of Board members, Committees' cost and expenses, salaries and remuneration, development and maintenance of any property owned by the Fund.

   Where in exceptional circumstances, the Roads Fund is insufficient to meet the actual or estimated liabilities of the Roads Fund; the Minister may make advances to the Roads Fund in order to meet the deficiency or any part thereof. Such advances shall be made on terms and conditions, whether as to repayment or otherwise as the Minister of Finance may determine.

4. **Functions of the Board: -**
   Clause 10 of the Bill outline the functions of the Roads Fund Board to include: ensuring cost effective, transparent and accountable arrangements for the remittance of money into the Fund; disbursing monies from the Road Fund to the road agencies; scrutinizing and approving applications to the Roads Fund for Road maintenance; ensuring transparency and accountability in the disbursement of the Roads Fund; retaining the balance of the money in the Roads Fund for road maintenance projects, etc.

5. **Application of the Roads Fund:**
   The amount in the Roads Fund shall be disbursed to the Road Agencies specifically for the development, rehabilitation, reconstruction and maintenance of national road networks.

6. **Statement of Income and Expenditure: -**
   No later than 4 months to the end of every financial year, the Roads Fund shall prepare and submit to the Minister of Works for approval a statement of estimated income and expenditure for the following financial year. The Board will ensure that the expenses and commitments of the Fund do not exceed the Administrative Fund.

   However, in exceptional circumstances, the Minister may make advances to the Fund where revenue accrued is insufficient to meet actual or estimated liabilities of the Roads Fund and such advances shall be made on such terms and conditions whether as to repayment or otherwise as the Minister of Finance may determine. This Clause introduces the Minister of Finance as key to any financial assistance, which the Fund gets from the Ministry of Works.

7. **Accounts Audit: -**
   The Fund shall be audited by any auditor appointed by the Roads Fund from the list of auditors in accordance with guidelines prepared by the Auditor-General of the Federation and the report submitted to the Minster of Works along with an activity report not later than June 30 of each financial year. The financial year shall run from January 1 to December 31 as provided under Clause 19(6).

   Failure to comply with the auditing requirement pursuant to this Bill is an offence liable on conviction to a fine not less than N100,000. The Roads Fund shall also submit a copy of audited accounts prepared by a reputable auditing firm, to the Minister every 3 months, along with a copy of the general report. The annual report shall be available on demand to the public (Clause 19(7))

8. **Roads Fund Account: -**
   The Bill under Clause 19(2) states that all revenue accruing to the Fund shall be banked into one or more banking accounts at such banks as the Board may determine. In the wake of government's operation of a TSA, all government funds going to the Treasury Single Account, this Clause may not be practicable.

9. **General Reserve: -**

Any balance of the revenue accruing to the Roads Fund in any financial year shall be applied for the purpose of creating a general reserve or such reserve as the Board may prescribe from time to time. Any part of the Fund not required for use immediately may be invested in such a manner as the Board may in its discretion determine.

**10. Legal Proceedings: -**

There shall be a limitation of suit as the provisions of the Public Officers Protection Act shall apply to any suit instigated against any official or employee of the Board. No suit shall be commenced against any member of the Board or an official before the expiration of a period of 1 (one) month after written notice of the intention to commence the suit had been served on the Board by the intending plaintiff or his agent.

Apparently, the Bill requires that a person give a notice of 1 month to the Board of the Fund before a lawsuit can be commenced against any member of the board or an official of the Fund.

**11. Judgment Debt: -**

Any sums of money, which may by judgment of the Court be awarded against the Board, shall be paid from the funds of the Board.

The Bill under Clause 20(6) provides that in any action or suit against the Board, no execution or attachment or process in the nature thereof shall be issued against the Board. In other words, the Roads Fund or its Board cannot be sanctioned after any lawsuit, in a way that any of its property is confiscated, rather a settlement or compensation as awarded by the Court can be paid to the aggrieved. Such monetary settlement shall be paid from the fund.

**12. Five Year Rolling Plan: -**

Clause 21 of the Bill provides that the Board shall within the first year of its establishment prepare a 5 year Rolling Road Plan for the fulfillment of its responsibilities under the Bill. The plan shall be broken into yearly action program and shall contain information that would allow the determination of the Board's proposed activities. The plan shall constitute the basis for determining the financial needs of the Board and of its sourcing

The Board shall keep the plan under review and update it annually, with appropriate input from the road agencies, within the 5-year rolling plan. In essence, the plan shall be a working document and can change from time to time depending on the financial needs of the Board.

**13. Exemption from Taxation: -**

The provisions of any enactment relating to taxation of companies or trust funds shall not apply to the Roads Fund. Revenue accruing to the fund comes from several channels including 5% user price of petrol or diesel, and gifts in cash or property but not subject to taxation of any sort; perhaps because the fund is aimed at development.

**14. Power to Make Regulations: -**

The Board may with approval of the Minister make regulations to give proper effect to the Bill, which shall be published in the official Gazette.

**15. Minister's Power to Give Directives: -**

The Minister may give directives to the Board relating to its performance provided that they are not inconsistent with the objective of the Roads Fund. The directives may serve as the Minister's duty to check the powers and operation of the Board.

**16. The National Council on Privatization: -**

The National Council on Privatization shall in consultation with the Minister in charge of roads, not later

than 3 months after the this Bill is passed into law, take such steps as are necessary to bring into being the institutional structure of the National Roads Fund. In effect, it shall be the duty of this Council to stimulate and activate the institutional structure of the fund.

## CONCLUDING ISSUES

The National Roads Fund Bill seeks to assist in financing the development, rehabilitation and maintenance of national roads. Its major role would be to assist the Ministry of Works in the roads rehabilitation for faster infrastructural development. The creation of the Fund is a step in the right direction with regards to fostering development in Nigeria, however the management of the Fund could be a concern, should the cost of running the fund surpass its dividends.

Up to 3% of the total amount accruing to the Fund goes to pay for the administration of the fund; which covers emoluments and allowances to the Board members, staff and seconded staff from various Ministries (Works, Finance and Transport), and maintenance of properties occupied or owned by the Fund. This is quite remarkable as the Fund will be able to stand alone, since it can generate revenue to run its affairs and would not depend solely on the Federation account. Although, it can receive funds from the government purse if needed, but the Bill provides that a payment plan will be put in place to replace the received fund.

Nigeria needs more of revenue-generating agencies like the National Roads Fund to support the already existing agencies and departments in the development of this country. Improved infrastructure and accessible roads would attract foreign investors as well as encourage local business as it could ease transportation and logistics challenges. The National Roads Fund Bill is a means to a much needed reform in the transportation sector in Nigeria and should be passed into law.

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## About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes.
The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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