



# NILDS

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# **BILL ANALYSIS REPORT ON THE NATIONAL TOBACCO CONTROL ACT 2015 (AMENDMENT) BILL, 2019**

**Mohammed Amali\***

**Sponsor: Hon. Mohammed Tahir Monguno**

## **Objectives of the Bill**

The Bill seeks to improve upon the provisions of the Principal Act towards protecting the present and future generations of Nigerians and residents of Nigeria from the devastating health, social, economic, and environmental consequences of use of or exposure to tobacco or tobacco products and exposure to tobacco or tobacco produce smoke; and to give effect to the obligations to protect citizens against tobacco or tobacco product-related harms in the promotion of health and other human rights that Nigeria as a party to the World Health Organization (WHO) Framework Convention for Tobacco Control and other related treaties has agreed to undertake.

## **Summary of the Bill**

The Bill comprises 26 clauses. Clause 1 is the general amendment clause. Clauses 2, 3, 4 and 8 amend Section 2 of the Principal Act pertaining to the National Tobacco Control Committee. Clauses 6, 7 and 8 amend Section 9 of the Principal Act as it pertains to the regulation of smoking. Clause 9 deletes Subsection (3) of Section 11 of the Principal Act. Clauses 10, 11 and 12 amend Section 12 of the Principal Act as regards the prohibition of tobacco advertising, promotion and sponsorship. Clauses 13 and 14 amend Section 14 of the Principal Act regarding penalties/compliance pertaining to the prohibition of tobacco advertising, promotion and sponsorship. Clauses 15, 16 and 17 amend Section 16 of the Principal Act regarding penalties and compliance pertaining to sale of tobacco products. Clause 18 amends Section 17 of the Principal Act regarding the regulation of tobacco products, tobacco product contents and emission disclosures. Clause 19 amends Section 18 of the Principal Act as it pertains to product contents and

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emission disclosures. Clause 20 amends Section 20 of the Principal Act by increasing from 50% to 80%, the total surface area of the package to contain health warnings and other required information. Clause 21 amends Section 22 of the Principal Act regarding date of compliance to new regulations. Clause 22 amends Section 28 of the Principal Act regarding the prevention and management of conflicts of interests. Clause 23 amends section 29 of the Act regarding application for license for tobacco dealers. Clause 24 amends Section 39 of the Act under the miscellaneous provisions of the Principal Act. Clause 25 amends Section 42 of the Principal Act regarding penalties for non compliance with the provisions of the Principal Act. Clause 26 is the citation clause of the Bill.

### **Background**

The devastating health effects of tobacco consumption are well documented, with tobacco-related illnesses being some of the biggest public health threats the world faces today.<sup>1</sup> As such, for a designed national and international coordination to combat the tobacco epidemic, the World Health Organisation *Framework Convention on Tobacco Control* was adopted under Article 19 of the WHO Constitution and came into force on the 27<sup>th</sup> of February 2005.<sup>2</sup>

Consequently, after signing this convention and ratifying it, Nigeria signed the *National Tobacco Control Act* into law in May 2015. This law was aimed at improving upon the hitherto Tobacco Act<sup>3</sup> because that Act did not proffer efficient tobacco control in Nigeria since the commodity's production, sale and consumption remained an indiscriminate practice across the country.<sup>4</sup> Despite this however, tobacco consumption continues to be a menace to public health in Nigeria because there have been latent problems both with implementation, and with the content of the 2015 Act.

This (amendment) Bill seeks to improve upon the 2015 Act by making stiffer provisions in key areas of the existing Act. For instance, it is

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<sup>1</sup>[https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index)

<sup>2</sup> This Treaty was adopted by the 56th World Health Assembly held in Geneva, Switzerland on 21 May 2003 and became the first World Health Organisation treaty adopted under article 19 of the WHO constitution. The treaty came into force on 27 February 2005.

<sup>3</sup> CAP T16 LFN 2004.

<sup>4</sup><https://punchng.com/group-calls-for-implementation-of-tobacco-control-act/>

scientifically proven that people exposed to second hand smoke face the same dangers as smokers themselves because they too inhale the same poisonous gases and toxic chemicals found in tobacco smoke. The Principal Act nominally provides for smoke-free public transportation, indoor public places, and residential houses (private homes) co-occupied by persons below 18 years of age, nursery to secondary-level educational institutions, recreational facilities, market places, and shopping malls.<sup>5</sup> But because there is no safe level of exposure to second hand smoke,<sup>6</sup> in line with Article 8 of the *Framework Convention on Tobacco Control* that calls for 100% protection from second-hand smoke in indoor spaces and other public places,<sup>7</sup> this (amendment) Bill seeks to protect the public against the harms of second-hand smoke by further limiting the areas where smokers can smoke within the public space.<sup>8</sup>

Another area of improvement of this (amendment) Bill upon the Principal Act pertains to the prohibition of advertisements by expanding the scope of prohibition to “*in-country, local and cross-border advertisement, promotion or sponsorship of tobacco or tobacco products in*” Nigeria<sup>9</sup> This (amendment) Bill also features a significant improvement upon the Principal Act by increasing the graphic health warnings on cigarette packs from 50% to 80%.<sup>10</sup> This is particularly important because research has shown that warnings that are graphic, larger, and more comprehensive in content are more effective in communicating the health risks of smoking.<sup>11</sup> This (amendment) Bill also reviews the standard of tobacco products by subjecting them to the (prior) evaluation of a Joint Committee of the

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<sup>5</sup>Section 9 of the Principal Act.

<sup>6</sup> U.S. Department of Health and Human Services, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, Centres for Disease Control and Prevention, Coordinating Centre for Health Promotion, National Centre for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

<sup>7</sup> World Health Organization- WHO Framework Convention on Tobacco Control: Guidelines for Implementation 2013  
[http://apps.who.int/iris/bitstream/10665/75218/1/9789241501316\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/75218/1/9789241501316_eng.pdf).

<sup>8</sup>Clauses 6, 7 and 8 of the Bill.

<sup>9</sup>Clause 10 of the Bill.

<sup>10</sup>Clause 20 (1) of the (amendment Bill).

<sup>11</sup><https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593056/>

Standards Organisation of Nigeria and the Federal Ministry of Health. The Principal Act currently only prescribes prohibitive measures for non-compliance with standards after-the-fact, as against what this (amendment) Bill seeks to implement, which is that standards are complied with from the onset.<sup>12</sup>

Tobacco control represents a powerful tool in improving health in communities and in achieving the Sustainable Development Goals (SDGs).<sup>13</sup> To markedly bend the global tobacco epidemic's trajectory, a renewed and sustained focus is needed on effective, comprehensive, and aggressively enforced tobacco control policies.<sup>14</sup>

## COMMENTS

### Cross-Country Analysis

#### United Kingdom

The *Health Act* governs many aspects of public health, including tobacco control. With respect to tobacco control, the Act regulates smoking in public places, workplaces, and public transport. Numerous regulations have been issued under the Health Act to implement the Act, including: 1) *Smoke-free (Premises and Enforcement) Regulations 2006*; 2) *Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007*, 3) *Smoke-free (Penalties and Discounted Amounts) Regulations 2007*; 4) *Smoke-free (Exemptions and Vehicles) Regulations 2007*, 5) *Smoke-free (Signs) Regulations 2012* and (6) *Smoke-free (Private Vehicles) Regulations 2015*.

Smoking in the UK is prohibited in public transport, indoor public places, and indoor workplaces, including work vehicles. There are a few limited exceptions to the ban. Specifically, smoking is permitted in designated rooms in hotels, long term care homes, palliative hospices, prisons, and off shore installations such as oil rigs; and smoking is permitted for sampling cigars or pipe tobacco in specialist tobacco shops.

The UK holds similar regulations to this (amendment) Bill about the labeling and packaging of cigarette packs generally, but an admirable

<sup>12</sup>Clause 18 of the (amendment) Bill.

<sup>13</sup> SDG target 3.4 is to reduce premature deaths from NCDs by one third by 2030, including cardiovascular and chronic respiratory diseases, cancers, and diabetes-  
<https://guardian.ng/features/enforcing-laws-against-tobacco-use-in-nigeria/>

<sup>14</sup> As stated by Dr Emmanuel Gakidou- a senior author lead researcher at Institute for Health Metrics and Evaluation at the University of Washington.

feature to glean from the UK experience is the specificity of restrictions in the area of advertisements of tobacco products. Tobacco advertising was banned in the UK in 2003, and following that, tobacco companies became increasingly reliant on displays at the point of sale to draw attention to their products and stimulate sales. However, since 2012 it has been illegal in England, Wales & N. Ireland (2013 in Scotland) to display tobacco products at the point of sale in large stores. On 6 April 2015, the ban was extended to small stores across the whole of the UK.<sup>15</sup>

The Nigerian Act prohibits the promotion/advertisement of tobacco or tobacco products in any form.<sup>16</sup> This, however, may lead to omnibus interpretations for not being as specific in intention as what is obtainable in the UK.

#### **Existing Legal Order:**

##### ***Standards Organization of Nigeria Act, Cap S9 LFN 2004***

By the provisions of Section 5 (1) (b) of this Act, the Standards Organisation of Nigeria “*undertakes investigation as necessary into the quality of facilities, systems, services, materials and product, whether imported or manufactured in Nigeria.*” This is in tandem with Clause 18 of this (amendment) Bill that holds- “*tobacco and tobacco products shall be prescribed by a joint committee of the Federal Ministry of Health and the Standards Organisation of Nigeria.*”

There is therefore no conflict between this Act and the (amendment) Bill.

Constitution of the Federal Republic of Nigeria 1999 (as amended)

By the provisions of Section 14 (2) (a) of this Constitution, “the security and welfare of the people shall be the primary purpose of government.” This provision is in tandem with Clauses 6, 7, and 8 of this (amendment) Bill that provides for the protection of the public from second hand smoke through the provision of stiffer measures and prohibitions regarding smoking in the public space.

There is therefore no conflict between this (amendment) Bill and the CFRN 1999 (as amended).

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<sup>15</sup>ASH Fact Sheet on UK tobacco advertising. Available online at [www.ash.org.uk](http://www.ash.org.uk)

<sup>16</sup>Section 12 (1).



### **Contents of the Bill:**

Clause 8 of the Bill amends Section 9 of the Principal Act in Subsection (5) by introducing new paragraphs (h), (i) and (j), and renumbering them accordingly. However, there is already a paragraph (h) in the existing Act.

Clause 10 amends Section 12 of the Principal Act in Subsection (1) by introducing a new paragraph (d) that would now make a reading of-

*“Except otherwise provided in this Act, no person shall-(d) in-country, local and cross-border advertisement, promotion or sponsorship of tobacco products is prohibited in Nigeria and across its borders.”*

It is apparent that this does not conform to the principle of clarity and unambiguity in drafting.

### **Conclusion and Recommendations**

The staggering toll of smoking on health echoes well beyond the individual, especially as tobacco threatens to exact long-term financial and operational burdens on already resource-constrained health systems. Despite the progress in some settings, the war against tobacco is far from won. Consequently, the new paragraphs introduced into Section 9 of the Principal Act in Subsection (5) by Clause 8 of the Bill should be renumbered paragraphs (i), (j) and (k); and the new paragraph (d) that Clause 10 introduces in Section 12 (1) of the Principal Act should be made a new Subsection (2).

Consequently, this proposed legislation is important and may be sent for further legislative action subject to the foregoing recommendation.

# **BILL ANALYSIS REPORT ON FEDERAL AIRPORTS AUTHORITY OF NIGERIA ACT (AMENDMENT) BILL, 2019**

**Usman Ibrahim\***

**SPONSOR: Hon. Dachung Musa Bagos**

## **Objectives**

The main objective of the Bill is to provide for the payment all monies received by the Authority into the Federation Account under Section 162 of the CFRN 1999 as altered.

## **Summary of the Bill**

The Bill has 3 Clauses which provide for the amendment of Sections 12 of the Principal Act.

## **Background**

A proposal to pay "all monies" received by the Federal Airports Authority of Nigeria (FAAN) into the Federation Account would appear to be in line with section 162(1) of the Constitution. The "revenue" (as distinct from other FAAN funds) coming to the FAAN should be going to the Federation Account within the exception granted under section 80(1) because:

These are monies specifically designated by section 162(1) for the Federation Account;

These are not monies specifically designated by an Act of the National Assembly for some other public fund of the Federation;

There is no other fund established for a specific purpose and specifically designated by an Act of the National Assembly for receipt of "revenue" from the FAAN.

from the foregoing analyses, however, there is a need for caution in the sense that what the Constitution directs its payment into the Federation Account is "all revenues" received. Instead, the expression consistently used in the Bill is "all monies" received. This has a fundamental effect that verges on the unconstitutional as well. Usually, the funds of an Authority consist of budgetary allocations, trust funds, subventions, grants-in-aid and

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loans, grants, gifts accruing from any other government or non governmental bodies or individuals, testamentary dispositions and other assets that may accrue to the FAAN. These are all "monies" received by the FAAN but are logically outside the description "revenue". The term "revenue" generally refers to income or earnings from services rendered. Or as section 162(10) of the Constitution defines it for section 162(1) and the Federation Account, it means:

...any income or return accruing to or derived by the Government of the Federation from any source and includes –

Any receipt, however, described, arising from the operation of any law;

Any return, however, described, arising from or in respect of any property held by the Government;

Any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body.

In this sense, therefore, monies received by way of revenues, taxes, fees, levies, and penalties may constitute "revenue" but not the former class of "monies" received i.e. budgetary allocations, trust funds, subventions, grants-in-aid and loans, grants, gifts accruing from any other government or non-governmental bodies or individuals, testamentary dispositions and other assets that may accrue to the Authority.<sup>17</sup>

It is only logical that "revenue" received go to the Federation Account because they are collected from across the Federation and States should have a share from revenue generated from them or from within their territories.<sup>18</sup> It appears, however, that trust funds, subventions, grants-in-aid and loans, grants, gifts accruing from any other government or non-governmental bodies or individuals, testamentary dispositions and other assets essentially belong to the Consolidated Revenue Fund given the provisions regarding the Consolidated Revenue Fund i.e. "into which all revenues or other amounts of money raised or received by the Federation shall be paid".<sup>19</sup> These monies would appear to come within the meaning of "other monies raised or received" by the Federation. Again this appears to

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<sup>17</sup> See generally M.E. Etudaiye and S. Danwanka, 'What Monies and into What Account Must They Be Paid- Consolidated Revenue Fund or Federation Account?' *Abuja Journal of Public and International Law*, December 2108, pp. 119-127, 122-126.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*