



# **The Constitutional Amendment on Decentralization of the Nigerian Railway Sector: Pitfalls and Opportunities**

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## Introduction

On March 23, 2023, the erstwhile president of Nigeria, President Muhammadu Buhari assented to Sixteen (16) Constitutional Amendment Bills (the “**Bills**”)<sup>1</sup>. Most notable feature of some of the Bills is the devolution of powers on certain items previously listed on the Exclusive Legislative list (which only the Federal Government, through the National Assembly could legislate on) to the Concurrent Legislative list (which both the Federal Government/National Assembly and the State Governments/State Houses of Assembly could legislate on). One of such new Bills moves “railways”, hitherto item 55 of the Exclusive Legislative List, to the Concurrent Legislative List of the Constitution of the Federal Republic of Nigeria (Fifth Alteration) Act, No. 32, 2022 (the “**Fifth Alteration Act**”)<sup>2</sup>. This Fifth Alteration Act is the first legislative attempt to regulate and decentralize railway operations and enhance the railway sector since Nigeria’s independence in 1960.

## Highlights of the Fifth Alteration Act

### *Interstate Vs Intra State Railway Infrastructure*

Pursuant to the Fifth Alteration Act, the National Assembly is empowered to legislate for the Federation or any part thereof with respect to the (i) construction and maintenance of “inter-state” railway tracks and infrastructure; (ii) the establishment of a national railway agency for the regulation of railway operations throughout the Federation; and (iii) the establishment and maintenance of a national railway carrier for inter-state transportation throughout the Federation.<sup>3</sup> While the House of Assembly of a State is empowered to make laws for the State with respect to the establishment, operation and maintenance of a state railway carrier within the state including the construction and maintenance of railway tracks and infrastructure within the state.<sup>4</sup>

Thus, the Federal Government has the exclusive authority to pass laws on the construction and maintenance of interstate railway tracks and infrastructure as well as establish a national railway agency and a national carrier throughout Nigeria. The power to construct, operate and maintain railway tracks within a state now falls under each state’s purview. By the Fifth Alteration Act, States are now allowed to make laws establishing and regulating their own state railway carriers and operating their own railway services within their territories as they deem fit.

### *Introduction of a Regulatory Agency*

The Fifth Alteration Act provides that the Federal Government can establish a state railway agency to regulate railway operations throughout the Federation. Prior to the Fifth Alteration Act, there was no national railway agency. The Nigerian Railway Corporation (“**NRC**”) is an enterprise empowered under Section 17(2) of the NRC Act to construct, manufacture, maintain or repair any railway in Nigeria. The NRC is a mere operator in the railway sector, and not a

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<sup>1</sup> List of the 16 constitutional alteration bills signed into law by President Buhari, NTA NG. Available at [List of the 16 constitutional alteration bills signed into law by President Buhari - Nigerian Television Authority -Africa's Largest TV Network \(nta.ng\)](#) Accessed on March 23, 2023.

<sup>2</sup> Constitution of the Federal Republic of Nigeria (Fifth Alteration) Bill, No 32, 2022

<sup>3</sup> Paragraph 20B (1) of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

<sup>4</sup> Paragraph 20B (2) of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

regulatory agency. The introduction of a railway agency dedicated to overseeing and regulating railway operations throughout Nigeria holds the potential to revolutionize Nigeria's railway sector.

Although the Fifth Alteration Act does not specifically provide that states can establish their own railway agencies, it can be implied that a state can establish an agency to regulate the intra-state railway operations and tracks within the state. The power to make laws on the "establishment, operation and maintenance of a state railway carrier" necessarily includes the power to establish an agency to carry out the stated functions of regulating and overseeing the operations of railway carriers and operators within the state, as well as the construction or maintenance of such railways.

Another intriguing dimension in the Fifth Alteration Act is regarding whether states must necessarily own and operate the railway carriers to be set up. To be sure, the Fifth Alteration Act makes copious reference to "a state railway carrier...". This does not appear to capture private operators, although, where a state is empowered to do a thing, it may delegate such powers and carry out such functions through third parties such as through the issuance of licences or permits or the creation of concessions. Any of these approaches will satisfy both a narrow and broad interpretation of "state carrier" as used in the Fifth Alteration Act.

### **Pitfalls of the Fifth Alteration Act**

#### *Uneven Development*

A major downside to the decentralization of the Nigerian railway sector is the resultant uneven development of the railway sector across the country. Typically, the more commercially developed or populous states will be more attractive to the private sector/investors as there will be necessary population and patronage to ensure a healthy return on investment. However, less-developed or less-populous states may not have a functional self-sustaining railway system for a long time because investing in such states will entail much more capital and less return on investment and the prices to the end-users may be exorbitant compared to the other existing modes of transport available to the residents of such states. Nevertheless, these risks can be adequately addressed by planning and creativity on the part of such state governments/private actors.

### **Opportunities in the Railway Sector**

#### *Private Sector Participation and Public Private Partnerships*

The Fifth Alteration Act opens up more opportunities for private concessioning and investment in the railway sector. With the amendment, private sector participants will be more willing to invest in the sector as it may be easier to interface with state governments (rather than federal). Further, with increased private investment in the railway sector, there is potential for significant economic growth through job creation, increased trade and a boost on other economic activities throughout Nigeria. As railways infrastructure are capital-intensive and often a huge challenge for governments, private operators can bring the much-needed expertise, innovation and funding to the railway sector. A well-planned investment approach to rail financing and operations can unleash the great value that rail transportation system can bring to the

economy. The challenge of funding and viably operating railway projects can be tackled through smart initiatives, private investments and profit-sharing PPP models.

For private investors looking for long-term investment opportunities, the railway sector in Nigeria is a promising investment opportunity. Aside from the direct construction or operation of the railway tracks, private operators can also invest in ancillary activities such as ticketing, tele-signalling, advertising, retail malls and/or maintenance of the railway tracks. The risks connected with the investment are proportional to the scope or aspect of the project (i.e., building and operating the infrastructure and operating the trains) and can be mitigated through careful planning. Existing PPPs in similar sectors such as roads, seaports, airports or wastewater infrastructure demonstrate that the parties can agree on how the risks in respect of the project will be shared or mitigated so as to make the project economically viable and attractive – a win-win for all the parties involved. Hence, the private investors or concessionaires may successfully negotiate better deals and bear less risks in the project. In addition, the state governments are likely to provide government support incentives such as tax reliefs, waivers and other government backing to private operators to ensure profitability.

### *Passenger Traffic vs. Freight Traffic*

In terms of profitability, a distinct disparity emerges between passenger and freight traffic. While passenger traffic is an essential component of any railway sector, it faces inherent challenges in terms of profitability over long distances in Nigeria. Comparatively, passenger traffic is more profitable for short distance transport in Nigeria when compared to freight traffic whereas for long distance transportation, freight is more profitable.

Long distance passenger traffic has seen some improvement in recent years, especially with the introduction of the new standard gauge lines between Lagos and Ibadan, and Itakpe and Warri. Although receiving patronage, passenger traffic may not be so profitable over long distances because of the low demand and general preference for air or road transport. Passenger trains typically have a limited number of seats and achieving high occupancy rates on long-distance routes may be possible but is definitely challenging. Also, passenger traffic is subject to varying demand patterns, which can fluctuate significantly due to seasons, times, holidays and economic conditions. The unpredictability makes it challenging to ensure consistent and sustainable patronage and profitability for passenger train services over long distances. Further, the substantial costs associated with operating and maintaining passenger trains may outweigh the revenue generated from ticket sales, making long distance passenger traffic less financially viable.

In contrast, short distance/intra-city transport, passenger traffic has the potential to be more profitable than even freight traffic. Nigeria's urban cities such as Lagos, Abuja and Kano have a high population density and significant daily commuter demand.<sup>5</sup> This means that there is a high potential for passenger trains to attract a large number of daily passengers, thereby resulting in a steady stream of revenue across the seasons and throughout the year. The larger

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<sup>5</sup> Garba Shehu, (2021) 'The coming of Kano-Kaduna modern railway and its socio-economic significance' < <https://www.thecable.ng/the-coming-of-kano-kaduna-modern-railway-...>> accessed on July 10, 2023

volume of passengers, combined with relatively lower operational costs result in increased profitability of short-distance passenger train services. In addition, passenger trains have the advantage of offering ancillary services, which can further increase profits. These services include premium seating options, onboard catering, billboards for advertisements, and other amenities. By offering these value-adding services, passenger train operators can generate additional revenue streams making short-distance passenger trains even more profitable and desirable.

A 2021 study revealed that the highest rail transport revenue in Nigeria was generated from passengers.<sup>6</sup> Passenger traffic contributed around 1.1 billion naira to rail traffic revenue in the country.<sup>7</sup> However, freight traffic accumulated to around 72 million naira in revenue.<sup>8</sup> Considering that short distance passenger traffic is more popular in Nigeria, this study reflects the profitability of passenger trains as compared to freight trains for short distance transport.

Freight traffic, on the other hand, may be more profitable in Nigeria for long distance transport. This is because there is a large demand for freight transportation, and railways are more suited for seamlessly transporting larger volumes of goods over longer distances. This will result in higher revenue per trip compared to passenger trips. The lower cost per ton per kilometre and higher capacity of railways in comparison with road transport make railways a more attractive option for freight transport.

Although freight traffic may be more profitable over long distances, a balanced and integrated transportation system should encompass both passenger and freight services. Also freight rails are more cost-intensive to build than passenger rails, and there will always be the challenge of bringing the freight to the railways since most railways do not commence from or terminate at the places where bulky freight are generated or assembled. Short distance freight transport faces challenges such as lower volumes, loading and unloading costs, handling fees and competitive pricing which may affect its profitability.

### **The Impact of the Railway Sector on the Development of Countries**

Railways have had a profound impact on the development of many countries around the world. Railways have been instrumental in opening up of new markets and connecting people to opportunities. Whether through the creation of transcontinental networks, high-speed rail systems or extensive national networks, railways enhance transportation efficiency, promote trade and encourage urbanisation. In India, the railway system (one of the largest in the world) has been a key driver of economic growth since its inception in 1853.<sup>9</sup> The railway network has connected remote areas of the country with urban cities and ports, thereby enabling access to

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<sup>6</sup> Statista, (2023) 'Revenue from rail transportation in Nigeria as of 2<sup>nd</sup> quarter 2021' <<https://www.statista.com/statistics/1296617/revenue-from-rail-transportation-in-nigeria-by-source/>> accessed on July 11, 2023.

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Latika Chaudhary, (2013) 'Railways and Indian Economic Development' <<https://blogs.lse.ac.uk/southasia/2013/04/29/railways-and-indian-economic-development/#:~:text=Railways%20were%20the%20most%20important,government%20and%20the%20Princely%20States..>> accessed on July 10, 2023.



goods and services. The railways have been instrumental in supporting agriculture, industry, and tourism, providing affordable transportation options and fostering economic growth.<sup>10</sup>

Likewise, in China, the railway sector has a crucial role in the country's economic development over the past few decades. China's rapid expansion of its railway network has been instrumental in its economic growth and development.<sup>11</sup> The country has invested heavily in high-speed rail, connecting major cities and regions across vast distances. China's high-speed rail network, known as 'Harmony Express' being the world's largest and fastest, covering over 22,000 kilometres at speeds of up to 350 kilometres per hour, is a symbol of China's technological adroitness.<sup>12</sup>

The development of railways in the United States in the 19<sup>th</sup> century was instrumental in the country's westward expansion and economic growth.<sup>13</sup> The railways made it possible to transport goods and people more quickly and easily, which helped to spur economic growth in the region. Railways connected the vast territories, which facilitated trade and encouraged settlement in previously inaccessible regions and propelled the growth of industries such as mining, agriculture and manufacturing.

### Conclusion

The Fifth Alteration Act is commendable as it has the capacity to enhance the development of a much-needed robust and efficient railway system in Nigeria. With the right attitude to public investment and partnerships, the railway sector has the potential to become a key driver of economic development in Nigeria and may be an instrumental factor in repositioning Nigeria as a truly developing nation.

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<sup>10</sup> Ibid.

<sup>11</sup> Ghady Rmaily (2023) 'China's High-Speed Railway Dominance: A Model for Infrastructure Investment' <[https://www.linkedin.com/pulse/chinas-high-speed-railway-dominance-model-investment-ghady-rmaily?utm\\_source=share&utm\\_medium=member\\_ios&utm\\_campaign=share\\_via](https://www.linkedin.com/pulse/chinas-high-speed-railway-dominance-model-investment-ghady-rmaily?utm_source=share&utm_medium=member_ios&utm_campaign=share_via)> accessed on July 10, 2023

<sup>12</sup> Ibid

<sup>13</sup> Library of Congress, 'Railroads in the Late 19<sup>th</sup> Century', <[Railroads in the Late 19th Century | Rise of Industrial America, 1876-1900 | U.S. History Primary Source Timeline | Classroom Materials at the Library of Congress | Library of Congress \(loc.gov\)](#)> accessed on July 11, 2023.

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