

**A BILL FOR AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE NATIONAL  
AGENCY FOR THE CONTROL OF HIV/AIDS AND FOR MATTERS CONNECTED  
THEREWITH**

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows;

Commencement:

**PART I ESTABLISHMENT OF THE PRESIDENTIAL AIDS COUNCIL**

1. (1) There is hereby established the Presidential AIDS Council (hereinafter referred to as "the Council").
- (2) The Council shall consist of -
  - I. Mr. President as Chairman (and in his absence the Vice-President shall preside),
  - ii. Vice-President,
  - iii. Minister of Health,
  - iv. Minister of Women Affairs
  - v. Minister of Inter-governmental Affairs and Youth Development,
  - vi. Minister of Education,
  - vii. Minister of Information and National Orientation,
  - viii. Minister of Finance,
  - ix. Minister of Defence
  - x. Minister of Internal Affairs,
  - xi. Minister of Labour and Productivity,
  - xii. National Planning Commission,
  - xiii. Minister of Sports and Social Development, and
  - xiv. Minister of Culture and Tourism.
- (3) The Secretary to the Government of the Federation shall act as Secretary.
- (4) The Council shall have the following functions -
  - (a) to provide political leadership and advocacy for the prevention and control of HIV/AIDS at the highest level;
  - (b) to facilitate national and international partnership for the country's HIV/AIDS control initiative;
  - (c) to ensure sustenance of funding and advocacy against HIV/AIDS on all levels of government and society;
  - (d) from time to time, to review the performance of the activities of the Board and to ensure that the Agency complies with the HIV/AIDS Emergency Action Plan; and
  - (e) to report regularly to the nation on the progress of the national response.

## State and Local Governments

2. (1) State Governments and Local Governments **shall** establish HIV/AIDS intervention committees and programmes and promulgate laws to promote the control of HIV/AIDS.
  - (2) When a State or Local Government cannot or does not fulfil an executive obligation in terms of subsection (1), Mr President may, after consulting the Council, instruct the Agency to intervene by taking -any appropriate steps to ensure fulfilment of that obligation, including:
    - (a) meeting with the Governor to discuss the extent of the failure of the State or Local Government to fulfil its obligations and stating any steps required to meet its obligations; and
    - (b) assuming responsibility for the relevant obligation in that State or Local Government to the extent necessary to;
      - i. maintain essential national standards to meet established minimum Standards for the management of the HIV/AIDS coordination in the State;
      - ii. Maintain unity in the fight against the HIV/AIDS pandemic; or iii. prevent that State or Local Government from taking unreasonable Action that is prejudicial to the interests of another State or to the Country as a whole.
  - (2) If Mr President intervenes, or instructs the Agency to intervene, in a State or Local Government in terms of subsection (1 )(b);
    - (a) notice of the intervention must be tabled in the Senate within 14 days of its first sitting after the intervention began;
    - (b) the intervention must end unless it is approved by the Senate within 30 days of its first sitting after the intervention began; and
    - (c) the Senate must review the intervention regularly and make any appropriate recommendations to Mr President.
  - (3) Where the Agency intervenes in a State or Local Government on the instruction from Mr President, the Agency may, in execution of the functions, utilise any funds allocated by Federal government to the State or Local Government, as the case may be, for HIV/AIDS control.

## **PART II ESTABLISHMENT OF THE NATIONAL AGENCY FOR THE CONTROL OF HIV/AIDS**

2. (1) There is hereby established an agency to be known as the National Agency for the Control of HIV/AIDS.
  - (2) The Agency
    - (a) shall be a body corporate with perpetual succession and a common seal; and
    - (b) may sue and be sued in its corporate name.

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There is a grave concern (that **if HIV/AIDS** is not taken seriously, or is denied, even in small pockets, and no action is taken to control AIDS, this will be a disaster for the country. While it is clear that Federal Government cannot ride rough-shod over States, the Constitution does provide for national actions to be undertaken in times of disaster or a national security threat. It is hoped that this can be interpreted as such. This Draft section 2 (in blue) is an attempt to provide for this possibility. Legal opinion will be sought on creative wording to achieve **this** aim.

3. (1) The Governing Board of the Agency (in this Act referred to as the "the Board") shall consist of -
- (a) a Chairperson,
  - (b) a human rights lawyer with experience in children's, women's rights and HIV/AIDS rights issues,
  - (c) a pathologist (virologist, microbiologist or haematologist) with knowledge of diagnostic methodologies in HIV,
  - (d) a medical scientist or pharmacist involved in vaccine and or treatment development and testing,
  - (e) a person living with HIV/AIDS who is also an AIDS-activist,
  - (f) a journalist or advertising agent with experience of mass communication techniques,
  - (g) a sociologist with understanding of community and group responses to catastrophe,
  - (h) An experienced accountant or management consultant with financial Management skills, (i) a person not below the rank of a Director from the Federal Ministry of Health, (j) a person not below the rank of a Director from the Federal Ministry of Education involved in HIV/AIDS issues, (k) a person not below the rank of a Director from the office of the Secretary to the Government of the Federation,
  - (l) a person from the organised private sector involved in HIV/AIDS issues, and (m) the Chief Executive Officer of the Agency.
- (2) The Chief Executive Officer shall provide the Secretary from the Agency.

#### Appointment of members of Board

4. (1) The Chairperson and members of the Board shall be appointed by the President.
- (2) The Chairperson and members of the Board shall hold office for a period of four years, but shall be eligible for reappointment for one further period of 4 years and no more.
- (3) A member of the Board, excluding a member who is in the full-time employment of the Public Service, shall be appointed *on* such conditions, as the President may determine.
- (4) The President shall, when appointing Board members, seek to as much as possible, select people living with HIV and AIDS to serve as Board members.

#### Disqualification from membership of Board and vacation of office

5. (1) A person may not be appointed as a member of the Board if that person -
- (a) under any law in force in any part of Nigeria, is adjudged to be a lunatic or otherwise declared to be of unsound mind;
  - (b) is under a sentence of death imposed on him by any competent court of law in Nigeria or a sentence of imprisonment or fine for an offence involving dishonesty or fraud (by whatever name called);

- (c) has, within a period of less than ten years prior to nomination, been convicted and sentenced for an offence involving dishonesty; and
  - (d) is an undischarged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in any part of Nigeria.
- (2) A member of the Board shall vacate office if -
- (a) he becomes disqualified in terms of subsection (1) from being appointed as a member of the Board;
  - (b) he is removed by a resolution passed by the Senate;
  - (c) his term expires and he is not otherwise reappointed;
  - (d) he dies or is otherwise incapacitated for a period of one year; and
  - (b) he submits his resignation to the President in writing. •
- (3) If a member of the Board dies or vacates his or her office in terms of subsection (2) Mr President may, subject to section 4, appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.

### **PART III      FUNCTIONS AND POWERS OF THE AGENCY**

6. (1) Subject to this Act and in addition to any other functions conferred on it by other provisions of this Act, the Agency **shall**;-
- (a) coordinate plan and identify multi sectoral HIV/AIDS activities of the National Response;
  - (b) facilitate the engagement of all tiers of government on issues of HIV/AIDS;
  - (c) advocate for the mainstreaming of HIV/AIDS interventions into all sectors of the society;
  - (d) develop and periodically update the strategic plan of the national HIV/AIDS response programme;
  - (e) provide leadership in the formulation of policies and sector-specific guidelines on HIV/AIDS;
  - (f) establish mechanisms to support HIV/AIDS research in the country;
  - (g) mobilize resources (local and foreign) and coordinate its equitable application for HIV/AIDS activities;
  - (h) develop its own capacity and facilitate the development of other stakeholders' capacity;
  - (i) provide linkages with the global community on HIV/AIDS; (j) monitor and evaluate all HIV/AIDS activities in the Federal Republic; (k) oversee, coordinate and facilitate the national AIDS response; (l) develop and disseminate, in a transparent and participatory manner, the Policies and strategies required to slow HIV transmission and mitigate the Adverse consequences of AIDS; (m) build capacity throughout the nation to implement the national HIV/AIDS Response programme; (n) facilitate the development and management of the policies and strategies of all sectors to ensure the human, financial and organization resources to Support the successful execution of the national HIV/AIDS response Programme;
  - (o) Coordinate the country's role in the international response; (p) support Federal line ministries and other entities to ensure transparent and accurate reporting on the utilization of financial and material resources; and (q) perform such functions as may, from time to time be assigned to it by the President's HIV/AIDS Council.

(2) For the purposes of giving effect to the functions of the agency any Federal Minister shall, if required by the President's HIV/AIDS Council, as advised by the Agency, make regulations from time to time for the purposes of ensuring standardization and uniformity of protocols on issues within the scope of their ministries.

(3) The Agency shall have the power to do all things necessary to carry out its functions including-

- (a) undertake operational research, on its own or in association or partnership with a national institute or tertiary education institution;
- (b) co-operate with persons and institutions undertaking basic research in the Federal Republic and in other countries by the exchange of scientific knowledge and the provision of access to the resources and specimens available to the Service;
- (c) enter into contracts within or outside the Federal Republic, with any person, government, or institution, and execute any contract, deed or any other document in the Federal Republic or any foreign country for the purpose of combating HIV/AIDS;
- (d) open and operate ordinary and domiciliary accounts for the Agency in recognised banking institutions in the Federal Republic;
- (e) enter into agreements to facilitate or secure the payment of commitments and to this end indemnify any person or cede, exchange or cancel agreements;
- (f) appoint officers and employees at such remuneration and on such conditions subject to the relevant legislation;
- (g) pay gratuities and pensions to its officers and employees;
- (h) develop and maintain an appropriate organisational structure and office arrangement; and (i) generally, enter into any contract or perform any act, whether within the Federal Republic or outside, as will in the opinion of the Board contribute towards the attainment of the Agency's objectives.

(4) The Board **shall—**

- (a) determine the overall policies of the agency, including its financial and operating procedures and ensure the effective implementation of the policies and procedures;
- (b) make rules for the appointment, promotion and discipline of employees of the Agency; and
- (c) establish, encourage and promote training programmes for the employees of the Agency and other appropriate persons from public or private organisations;

Provided that the Agency shall not be an implementing body.

#### Meetings of Board

7. (1) The meetings of the Board and the conduct of business at meetings shall be prescribed by Regulations.

(2) A quorum for a meeting of the Board shall be half of the appointed members plus one.

(3) A decision of the majority of the members of the Board present at any meeting constitutes a decision of the Board and, in the event of an equality of votes,

the member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(4) A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of a vacancy on the Board, or that a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Board who were present at the time and entitled to sit as members.

(5) Minutes of the proceedings of every meeting of the Board shall be prepared and entered in a book kept for that purpose.

(6) Minutes of the proceedings of each meeting shall be submitted at the next meeting of the Board and, if passed as correct, shall be confirmed by the signature of the chairperson or other member presiding thereat and may, when so confirmed, be evidence in a court of law of the proceedings of the first-mentioned meeting.

(7) In the absence of the chairperson or the person acting as the chairperson from a particular meeting of the Board, the members present at that meeting **may** elect one of their number to preside at that meeting.

#### **Committees of Board**

8. (1)(a) The Board may appoint one or more committees to assist it with **the** performance of its functions and exercise of its powers; Provided that it must appoint:

- (i) a Finance Committee;
- (ii) an Audit Committee; and
- (iii) a Human Resources and Remuneration Committee.

(b) The Board may appoint one or more specialist advisory committees, to be chaired by a Board member but consisting of members other than members of the Board, to assist it with the performance of its functions and exercise of its powers.

(2) The provisions of sections 6 and 7 apply mutatis mutandis to Committees of the Board.

#### **Delegations and Supplementary Provisions**

9. (1) Subject to such conditions as it may impose, the Board may delegate any of its functions under this act to any of its committees or to the Chief Executive Officer.

(2) Nothing *in* this section shall prevent the Board from performing or exercising any of the functions and powers so delegated.

10. The Supplementary provisions set in the Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters contained therein.

#### **PART IV AGENCY STRUCTURE**

11. (1) There shall be an executive management committee, which shall consist of -(a) the Chief Executive Officer, and

(b) the heads of the main divisions of the Agency.

(2) The executive management committee is responsible for the management of the Agency in accordance with the policies of the Agency.

#### PART V STAFF OF THE AGENCY

12. (1) There shall be appointed by the President, on the recommendation of the Board, a Chief Executive Officer of the Agency who shall be responsible for the day-to-day administration of the Agency and also be its chief accounting officer.

(2) The Chief Executive Officer shall hold office in the first instance for a period of 4 years and may be re-appointed for a further period of 4 years and not more on such terms and conditions as may be determined, from time to time, by the Presidency.

(3) The Board may, from time to time, appoint for the agency such other staff, as it may deem necessary to assist the Chief Executive Officer in the performance of the functions of the Agency.<sup>2</sup>

(4) The Terms and Conditions of Service including remuneration, allowances, benefits and pensions) of officers and employees of the Agency shall be determined by the Board provided that:

- (a) The Staff of the Agency shall be public officers as defined in the Constitution of the Federal Republic of Nigeria 1999 ;
- (b) Service in the Agency shall be approved service for the purpose of the Pensions Act and accordingly officers and other persons employed in the Agency shall, in respect of their services in the Agency, be entitled to pension, gratuities and other retirement benefits as are prescribed thereunder;
- (c) Notwithstanding subsection (1) of this section, the agency may appoint a person to any office on the terms, which preclude the grant of a pension, gratuity or retirement benefits, and;
- (d) For the purpose of the application of the Pensions Act, any powers exercisable thereunder by the Minister or other regulations under section 23 thereof, is hereby vested and shall be exercisable by the Board and not by other persons or authority,<sup>4</sup>

#### PART VI FINANCIAL PROVISIONS

13. (1) The Agency shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Agency.

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" It is recommended that the Board should **delegate** this to the CEO. The reason that this is made a Board responsibility and not the CEO is to obviate the potential for corruption and nepotism. What should happen is that the Human Resources and **Remuneration** Committee of the Board Will set the parameters within which the CEO must manage the Agency staffing.

Same as above but we need to consult the Public Service Commission and look **at** other Agency Laws to see how this is done. We do not want the staffing of the Agency to be constrained to a rigid Public Sector model. This will defeat the objective.

' Which Minister? Is this the Federal Minister of Finance?

- (2) There shall be credited to the fund established in pursuance of subsection (1) of this section such payments as may be made to it by the Federal Government for the running expenses of the Agency and all other assets accruing from time to time to the Agency.
- (3) The Agency may establish and maintain one or more funds into which shall be credited such payments as may be made to it by donors and other agencies from time to time for the purpose of supporting HIV/AIDS activities and programmes in the Federal Republic.
- (4) The Agency shall disburse these funds to ministries, States, and other organisations that qualify and have been granted funding by the Agency for executing HIV/AIDS activities and programmes.
- (5) The Agency shall also, from time to time, apply the funds at its disposal to:
- (a) the cost of administration of the Agency;
  - (b) paying members of the Board and any Committee set up by the Agency for such expenses as may be expressly authorised by the Agency or Mr President in accordance with this Act and at the approved rates;
  - (c) the payment of salaries, fees of other remuneration, allowances, pensions and gratuities payable to officers and servants of the Agency;
  - (d) publicise and promote the activities of the Agency;
  - (e) train the members of staff of the Agency; and
  - (f) undertake all activities connected with its functions under this Act.
14. The Agency may accept gifts, including land, money or other property, on such terms and conditions, if any, as may be specified by the person or organisation making the gift provided that the conditions attached by the person or organisation making the gift are not inconsistent with the functions of the Agency under this Act.
15. The Chief Executive Officer shall cause to be prepared and submitted to the Board, not later than 30th September of each year, an estimate of the expenditure and income of the Agency for the following year.
16. The Agency shall cause to be kept proper accounts of the Agency in respect of each year and proper records in relation thereto and shall cause the accounts to be audited not later than 6 months after the end of the year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.
17. The Chief Executive Officer shall, not later than 30th *June* in each year, prepare and submit to the Board a report on the activities and administration of the Agency during the immediately preceding year and shall include in the report a copy of the audited accounts of the Agency for the year and the auditor's report thereon.
18. The Agency shall be exempted from the payment of income tax on any income derived by it under this Act or accruing to it from any investments.
19. The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Agency.

20. The Board may make such regulations as are necessary or expedient for carrying into effect the provisions of this Act.
21. In this Act, unless the context otherwise requires:
  - (a) "Agency" means the National Agency for the Control of HIV/AIDS, established under Section 1 of this Act;
  - (b) "Functions" includes duties and powers;
  - (c) "HIV/AIDS" means Human Immune-deficiency Virus/Acquired Immune Deficiency Syndrome'; and
  - (d) "Member" means a member of the Board of the Agency and includes the Chairman.
22. This Act may be cited as the National Agency for the Control of HIV/AIDS Act, 2004.

## SCHEDULE

Supplementary Provisions Relating to the Board  
Proceedings of the Board

1. Subject to this Act and Section 27 of the Interpretation Act, the Board may make standing orders regulating its proceedings or those of any of its communities.
2. Every meeting of the Board of the Agency shall be presided over by the Chairman and if the Chairman is unable to attend the members present at the meeting shall elect one of their members to preside at the meeting.
3. The quorum of the Board shall have half of the appointed members plus one.
4. The Board shall meet not less than four times in each year and, subject thereto, the Board shall meet whenever it is summoned by the Chairman, and if the Chairman is required to do so by notice given to him by not less than nine other members, he shall summon a meeting of the Board to be held within 14 days from the date on which the notice is given.

## COMMITTEES

5. (1) Subject to section 9 and standing orders, the Board may appoint such number of standing and ad-hoc committees as it thinks fit to consider and report on any matter with which the Board is concerned.
  - (2) Every Committee appointed under sub-paragraph (1) of this paragraph shall be presided over by a member of the Board and shall be made up of such number of persons, not necessarily members of the Board, as the Board may determine in each case.
  - (3) The decision of a committee of the Board shall be of no effect until it is adopted by the Board.

## MISCELLANEOUS

6. The fixing of the seal of the Board shall be authenticated by the signature of the Chairman or such other member authorised generally or specifically authorised by the Board to act for that purpose and of the Director General.
7. Any contract or instrument which, if made by a person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the Board by the Director General or by any other person generally or specifically authorised by the Board to act for that purpose.
8. Any document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Board shall be received in evidence and, unless the contrary is proved, be presumed, without further proof, to have been so signed or sealed.
9. The validity of any proceedings of the Board or Committee shall not be affected by"
  - (1) any vacancy in the membership of the Board or Committee; or
  - (2) a defect in the appointment of a member of the Board or Committee; or
  - (3) reason that a person not entitled to do so took part in the proceeding of the Board of Committee

## TRANSITIONAL PROVISIONS

10. The transitional provisions in the Schedule must be read and applied as substantive provisions of this Act.

Persons in Civil Service

11. (1) The Head of Service shall designate officers who are engaged in the National Action Committee on AIDS as employees to be seconded to the Agency.
- (2) An employee contemplated in sub-items (1) shall, as soon as possible after designation, be informed in writing of such designation.
- (3) The secondment of designated employees must be:
  - (a) to ensure the continuity of the activities of the Committee;
  - (b) must stipulate the period of secondment; and
  - (c) may not prevent the later redeployment of the employee to elsewhere in the civil service.
- (4) Any designated employee who disputes a transfer to the Agency may, within 30 days of receiving the notice, refer such a dispute to the Head of Service with a request for redeployment.

#### **Assets and liabilities**

12. (1) Immovable property owned by:
  - (a) the National Action Committee on AIDS; or
  - (b) the National Project Team of the World Bank credit programme, is transferred to the Agency.
- (2) From the commencement date all contractual rights, obligations, assets and liabilities of the National Action Committee on AIDS and the National Project Team, are transferred to the Agency.

#### **Delegation of Functions by Board**

13. **(1)** The Board may, by resolution, delegate any of its powers, to -
  - (i) a committee appointed under the Act;
  - (ii) The executive management committee or any member thereof; or
  - (i) Any officer or employee of the Agency.**(2)** The Board may delegate its powers subject to any conditions it may determine.

**EXPLANATORY MEMORANDUM**

The Bill seeks to establish the Presidential Council on AIDS (PAC) and the National Agency for the Control of HIV/AIDS (NACA) with its Board, executive and personnel, to co-ordinate the implementation of programmes for the prevention and control of the Acquired Immune Deficiency Syndrome (AIDS) in Nigeria.