

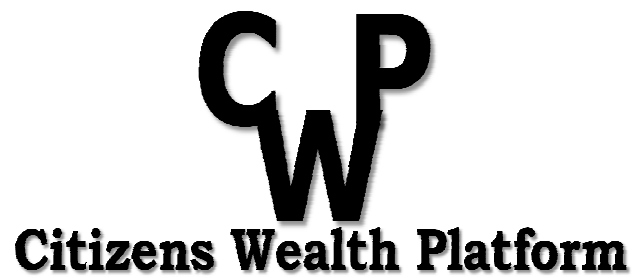
POLICY BRIEF: FISCAL GOVERNANCE SERIES (1)

Fiscal Stabilisation for Improved Fiscal Governance



Citizens Wealth Platform

Fiscal Stabilisation for Improved Fiscal Governance



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By

Citizens Wealth Platform (CWP)

(A Platform of non-governmental and faith based organisations, professional associations and other citizens groups dedicated to ensuring that public resources are made to work and be of benefit to all)

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17. International Centre for Development and Budget (ICDBudget)
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ABBREVIATIONS

CRF	Consolidated Revenue Fund
ECA	Excess Crude Account
FGN	Federal Government of Nigeria
FRA	Fiscal Responsibility Act
MBPD	Millions of Barrels Per Day
MTEF	Medium Term Expenditure Framework
NASS	National Assembly
NEC	National Economic Council
NSIA	Nigerian Sovereign Investment Authority
PD	Per Day
SAN	Senior Advocate of Nigeria
SWF	Sovereign Wealth Fund

EXECUTIVE SUMMARY

This Policy brief is focused on a review of the disputations about the legality and propriety of maintaining a stabilisation fund in the Excess Crude Account (ECA) and the Nigerian Sovereign Wealth Fund. It seeks to interrogate and proffer answers to the following posers:

- Should the ECA or any other Stabilisation Account be scrapped or should its management be modified?
- What is the legality of Stabilisation Accounts when pitched against the supremacy of the Constitution of the Federal Republic of Nigeria 1999?
- Is it possible to run a modern fiscal regime without Stabilisation or saving for the rainy day account?
- Can we reconcile constitutionalism and legality with practical economic and fiscal reality?

The Policy Brief is crafted with the following objectives:

- Review the arguments for and against the continuity of the ECA or any other Stabilisation Fund.
- Review the constitutionality and legality of ECA.
- Chart a way forward for fiscal stabilisation in Nigeria.

It recalls the unsustainable management of Nigeria's resources leading to huge expenditure in times of oil boom and inability to maintain basic services when the price of oil declines. The boom burst commodity price cycle has led to serious economic and development challenges across the three tiers of government. The Fiscal Responsibility Act (FRA) in introducing the ECA sought to cure the mischief in existing law and policy by introducing compulsory savings once the price of oil exceeds the benchmark price used in the budget. But the provisions of the FRA and the stabilization provisions of the Nigerian Sovereign Investment Authority (Establishment) Act seem to be in conflict with the distributable pool account provisions of section 162 of the 1999 Constitution. This has led to State Governments filing suits against the Federal Government challenging the legality and constitutionality of ECA at the Supreme Court.

Available evidence shows that the three tiers of government were sharing the revenue in ECA in times of high oil prices when there was no need for augmenting their revenue as required by the FRA. Nigeria was also a late starter in establishing the Sovereign Wealth Fund with about \$1.4bn saved in the fund. The challenges against the ECA seem to arise from the belief by State Governments that the Federal Government had not been transparent in its management of the fund. It is not necessarily a challenge against the idea of savings and a stabilisation fund.

Answering the posers raised at the beginning of this Policy Brief; the ECA or any other stabilisation account should not be scrapped but its management and administration modified for more transparency, accountability and participation in decision making by all the owners. There is the veneer of illegality on extant stabilisation accounts which can be remedied by an amendment of the Constitution. It is not possible to run a modern fiscal regime without stabilisation or saving for the rainy day account and on the basis of this, we need to reconcile legality with practical economic reality to solve Nigeria's existential fiscal challenges.

Against the background of the foregoing, the Policy Brief ends with the following recommendations with a view to ensure the fiscal stabilisation of the economy during periods of economic downturn.

(1) Section 162 of the 1999 Constitution should be amended to accommodate stabilisation funds which should be centrally managed for the whole federation.

(2) The Constitution should be amended to provide for the position of Accountant General of the Federation who will be in charge of the Federation Account, stabilisation and any other funds jointly owned by the three tiers of government whilst the Accountant-General of the Federal Government takes charge of Federal Government accounts.

(3) In the interim, the management of stabilisation funds should be done in a more transparent and accountable manner which gives monthly, quarterly, half yearly and yearly reports of accruals and withdrawals not just to the three tiers of government

alone, but the entire Nigerian public. The management structure should include representatives of all the owners of the funds.

(4) NASS should rationalise the stabilisation provisions for ECA in the FRA and the stabilisation fund in the NSIA Act. One stabilisation fund will be enough.

(5) Funding for stabilisation should no longer be limited to proceeds from commodity prices but it should be based on targets and limits including revenues from other sources including taxation.

(6) There is the need for amendments and review of the Acts establishing the stabilisation funds either in the FRA or NSIA to impose sanctions for managers and operators of the fund when they violate its basic principles.

(7) In reviewing the FRA or the NSIA, a clear management and decision making structure should be established in the new Stabilization Act detailing a decision making process that involves all owners of the funds. No major decision should be left to the discretion of any appointed or elected official.

(8) States are encouraged to enact and implement sub-national Fiscal Responsibility Laws to promote prudent management of their resources. To encourage States, FGN should set up a challenge fund in the nature of grants to states that meet certain benchmarks in fiscal responsibility.

(9) There is need for the urgent diversification of the economy, especially into manufacturing and value added agriculture across its value chains.

1. INTRODUCTION

Recent disputations about the legality and propriety of maintaining a Stabilisation Account in the Excess Crude Account (ECA) brings to the fore the challenge of fiscal governance in a federal arrangement. Every federal arrangement is founded on law, especially constitutional provisions which guide the inter-governmental relationships and the fiscal practice of the federating units. Considering Nigeria's experiences, this Policy Brief seeks to interrogate and proffer answers to the following posers.

- Should the ECA or any other Stabilisation Account be scrapped or should its management be modified?
- What is the legality of Stabilisation Accounts when pitched against the supremacy of the Constitution of the Federal Republic of Nigeria 1999?
- Is it possible to run a modern fiscal regime without Stabilisation or saving for the rainy day account?
- Can we reconcile constitutionalism and legality with practical economic and fiscal reality?

Over the years, governments at the Federal, State and Local Government levels have managed Nigeria's fiscal affairs in an unsustainable manner; in a "boom burst fiscal cycle", without a culture of savings. The pattern of expenditure has been uncoordinated and unplanned. It rose and fell with the boom burst cyclical nature of the mainstay of our national economy - the commodity price of crude oil. At some time, a former Nigerian leader was quoted as saying that Nigeria's problem was not the money but what to do with it. The country spent any huge revenue windfall from oil as soon as it came, and when prices crash, it became difficult to even maintain basic governmental services such as payment of salaries of civil servants. The country had little or no savings¹.

The challenge of intergovernmental fiscal relations has not been properly addressed under the constitutional fiscal regime. The three tiers of government share the same

¹ Dr Okonjo Iweala, former Minister of Finance in *Why We Need the Fiscal Responsibility Law* stated as follows: "The Fiscal Responsibility Act when passed will help us solve this problem. It will set out criteria on how additional earned revenue coming into national coffers will be managed to ensure that we save something for the rainy day, invest in profitable projects, provide more infrastructure for development and to enable us truly diversify our economic base in a steady fashion". However, this dream is yet to come true eight years after the enactment of the FRA.

currency, central bank, domestic credit market and the same international credit reputation. Free riding governments refuse to abide by the rules through reckless fiscal behaviour but they bear only part of the costs and would receive all the benefits emerging from the good fiscal behaviour of others. Thus, the choice of individual governments led and still leads to suboptimal outcomes for all other governments. Prior to 2007, there was no law to discourage such defection and free riding; rather there were perverse incentives for governments to engage in fiscal misbehaviour². Thus, during the \$18billion debt payback, it was noticed that while some states owed minimally, others owed very extensively and as such had to suffer greater deductions for their share of the debt.

The fact that some State Governments have mounted a legal challenge at the Supreme Court to the savings provisions of the FRA since 2008 shows the challenge of intergovernmental fiscal relations. This is compounded by the fact that even if states, in pursuit of fiscal federalism, want to manage their own resources and determine whether to save or not, 8 years after the enactment of the FRA, only 12 states have so far passed sub-national Fiscal Responsibility Laws with provisions similar to the FRA. In essence, politics is to a great extent mixed with finding solutions to practical economic and rational challenges.

The practical implication of this vicious cycle was felt in the 1983 -1989 period when the price of crude oil fell, eventually leading to the era of the Structural Adjustment Programme. Thereafter, the Gulf War Oil Windfall was frittered away by the Babangida regime. The “earn and spend” scenario continued until the days of the Obasanjo administration when savings in excess of \$20bn were recorded in the ECA. These savings were virtually exhausted to smoothen government expenditure during the financial crisis of 2008-2009. With high oil prices thereafter, Nigeria continued the “earn and spend” culture until the price of crude oil crashed in mid 2014. Now in 2015, with crude oil selling below the benchmark price of \$53 per barrel and with about \$2bn in the ECA, Nigeria has nothing to fall back upon. So many State Governments are unable to pay workers salaries and owe many months in arrears while the FGN just manages to

² *Subnational Discipline and Fiscal Responsibility Law: A Framework for Action* (2009) by Eze Onyekpere.

pay its workers. At the federal level, not a single kobo was disbursed for the implementation of capital projects between the end of the second quarter of 2014 and the second quarter of 2015. FGN just paid salaries and released money for a few overheads in an infrastructure deficient economy. Beyond the stabilisation controversy, should a country rely on a single commodity to provide the bulk of its budgetary resources and foreign exchange?

2. OBJECTIVES

The Policy Brief is crafted with the following objectives:

- Review the arguments for and against the continuity of the ECA or any other Stabilisation Fund.
- Review the constitutionality and legality of ECA.
- Chart a way forward for fiscal stabilisation in Nigeria.

3. METHODOLOGY

The Policy Brief is based on a desk review of literature, information, data and statistics from relevant agencies at the federal and state levels and from international agencies operating in Nigeria. The Policy Brief proceeds from the position that from empirical evidence, stabilisation funds are required to run any modern economy especially for commodity price dependent economies. Nigeria did not feel the full shock of the oil price collapse in 2008-2009 because of the savings in the ECA which was used to augment the lean income. The full impact of declining oil price is currently being felt in 2014-2015 because the ECA is almost empty.

4. THE LEGAL FRAMEWORK

4.1 The Legal Provisions

The starting point in the review of the legal framework is the 1999 Constitution which is the *grundnorm* and by its section 1 (3), any law inconsistent with its provisions is null and void to the extent of its inconsistency. The relevant part of section 162 of the Constitution which is the guiding provision is reproduced below.

(1) The Federation shall maintain a special account to be called the “Federation Account” into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.

(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State governments and the local government councils in each state on such terms and in such manner as may be prescribed by the National Assembly.

(4) Any amount standing to the credit of the states in the Federation Account shall be distributed to the states on such terms and in such manner as may be prescribed by the National Assembly.

(5) The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government council on such terms and in such manner as may be prescribed by the National Assembly.

(6) Each state shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the local government councils of the state from the Federation Account and from the Government of the State.

(8) The amount standing to the credit of local government councils of a State shall be distributed among the local government councils in that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.

However, section 35 of the Fiscal Responsibility Act 2007 states inter alia:

(1) Where the reference commodity price rises above the predetermined level, the resulting excess proceeds shall be saved in accordance with the provisions of subsection (2) of this section.

(2) The savings of each Government in the Federation in pursuance to subsection (1) of this section shall be deposited in a separate account which shall form part of the respective Governments Consolidated Revenue Fund to be maintained at the Central Bank of Nigeria by each Government.

(3) The Central Bank of Nigeria, shall in consultation with the Minister of Finance, the State Commissioners of Finance and Local Government Treasurers invest, for and on behalf of the Governments in the Federation, the savings of each Government and such investment can be undertaken in a consolidated manner, provided that the shares of each Government and income due to them from the investment are clearly identified.

(5) No Government in the Federation shall have access to the savings made in pursuance to subsection (2) of this section, unless the reference commodity price falls below the predetermined level for a period of three consecutive months.

(6) The augmentation referred to in subsection (5) of this section shall be limited to such sums that will bring the revenue of government to the level contained in its budget estimates.

Under the Nigerian Sovereign Investment Authority (Establishment etc) Act, 2011, section 3 provides its objectives as follows:

- (a) build a savings base for the Nigerian people;*
- (b) enhance the development of Nigerian infrastructure;*
- (c) provide stabilisation support in times of economic stress; and*
- (d) carry out such other matters as may be related to the above subject*

The functions of the Nigerian Sovereign Investment Authority (NSIA) include the establishment of a:

..ring-fenced portfolio of investments to provide supplemental stabilisation funding based upon specified criteria and at such times as other funds available to the Federation for stabilisation need to be supplemented (the Stabilisation Fund) as further set out in Part VI of this Act and the investment policies and guidelines developed by the Authority³.

Section 47 of the NSIA states that:

(1) The Authority shall ensure that the Stabilisation Fund is invested prudently and in a way that supports the objective of the Fund to be available to stabilise Federation

³ Section 4 (1) (c) of the NSIA.

revenues and consistent with section 5 of this Act and may invest in or sell all such assets, and use such derivative instruments for the purpose of hedging or efficient asset management, as the Authority determines may serve the objective.

(2) At the direction of the Minister, upon a proper demonstration of urgency and satisfaction of the criteria set out in section 48 of this Act, the Authority shall have the right to utilise capital and assets in the Stabilisation Fund to supplement resources available to stabilise the national economy.

Section of 48 of the NSIA Act states that:

The Minister may, at the end of any financial quarter, request, and the Authority shall upon such request pay from the Stabilisation Fund, an amount equal to the difference, if negative, between the actual quarterly Federation Account revenues generated through the sale of Benchmark Hydrocarbons and the Projected Federation Hydrocarbon Revenues for such quarter, provided that such amount will only be drawn after the depletion of the Budgetary Smoothing Amount⁴

The initial funding of the NSIA is \$1bn pursuant to the decision of the National Economic Council. It is to be contributed by all tiers of government (FGN, States, Federal Capital Territory, Local Government and Area Councils) being a percentage of such initial funding equal to each such Government's share of the Federation Revenue in accordance with the formula stated in the Allocation of Revenue (Federation Account, etc) Act. Subsequent funding is to be derived from Residual Funds from the Federation Account transferred to the Authority from all amounts of Residual Funds above the Budget Smoothing Fund⁵. The NSIA creates the Future Generations Fund, the Nigeria Infrastructure Fund and the Stabilisation Fund.

The fact that two laws enacted by the National Assembly (the FRA 2007 and NSIA 2011) since the return to civil rule in 1999 have provided for stabilisation and savings at

⁴ The Budgetary Smoothing Amount means an amount equal to ten percent of monthly residual funding up to a cumulative maximum amount at any one time of 2.55 of the Projected Federation Hydrocarbon Revenue for the year of such funding.

⁵ Sections 29 and 30 of the NSIA

the federal level implies there is a consensus of opinion that stabilisation accounts are good for the economy.

4.2 The Law As It Is - Disputations

4.2.1 Fiscal Responsibility Act: It is obviously clear from the foregoing provisions in the FRA and NSIA that savings and stabilisation are mandated to ensure fiscal stability in times of lean resources. However, can these provisions stand the test of constitutionalism when pitched against section 162 and other relevant sections of the 1999 Constitution?

By section 162 (1), all revenues collected by the Government of the Federation are to be paid into the Distributable Pool Account (which is actually, the subheading of that subsection) with the exception of the revenues stated in the subsection⁶. The exceptions are the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja. Considering the superiority of the Constitution to the FRA, the mere fact of oil revenues being above the budget benchmark price adopted in the Medium Term Expenditure Framework as stated in section 35 of the FRA does not exclude that revenue from being in the Federation Account. The parameters used in arriving at the benchmark price are unknown to the Constitution. The other constitutional exceptions to moneys automatically being swept into the Federation Account is found in section 163 of the Constitution relating to Item D, Part 11 of the Second Schedule to the Constitution. Revenue in excess of the benchmark price is not part of the exemption. Essentially, all revenues from oil and gas, without exception are to be paid into the Federation Account.

The second leg of the argument is that, once revenues are paid into the Federation Account, their distribution is guided by the other parts of section 162 of the Constitution.

⁶ The arguments on legality and constitutionality of the ECA are largely drawn from the brief of Charles Uwensuyi-Edosonwan SAN filed for Ebonyi State in the case of *Attorney General Ebony State v Attorney General of the Federation*; Suit No. SC 144/2009.

Thus, they are to be distributed on such terms and in such manner as may be prescribed by the National Assembly. Keeping them in the ECA through a compulsory savings provision does not amount to distribution.

The third leg of the argument is that, even current practices do not agree with the wordings of the FRA which requires a separate account for each government; not one account as currently practiced. Thus, there will be one account for FGN, 36 for states and 768 for local government areas as these accounts form part of the Consolidated Revenue Fund of each government. Stretching the argument further on the fact that investments are to be done in a consolidated manner shows that the FRA contemplates distribution of Federation Account funds but mandatory savings. But extant ECA is not an already distributed account or fund.

The fourth leg is that section 162 (3), (4), (5) and (8) of the Constitution limits the powers of the National Assembly to prescribing the terms and manner of allocation, and distribution and division of revenue from the Federation Account. NASS lacks the power to regulate what happens to the revenues of states and local governments after the allocation. Any attempt to so regulate their use of funds as is evident in section 35 (1), (2), (3) and (5) of the FRA is ultra vires the powers of NASS. Since the money in the ECA is deemed to be part of the Consolidated Revenue Fund of the State; by sections 120 (2) and (4) and 121 (1) and (2) of the Constitution, the authority to regulate withdrawals from the CRF lies with the State House of Assembly. As such, these provisions of the FRA appear unconstitutional. In ***Attorney-General Bendel State v Attorney-General Federation***⁷, the Supreme Court stated as follows:

..once the Federation Account is divided amongst the three tiers of government, the State Governments collectively become the absolute owners of their share that is allocated to them..So that it would normally be their prerogative to exercise full control over the share.

⁷ (1983) ANLR 208 at page 220

NASS has no powers to regulate the CRF of States. The Exclusive and Concurrent Legislative Lists are silent on this. In ***Attorney-General Abia State v Attorney-General Federation***, the Supreme Court stated⁸:

The National Assembly is a creation of the Constitution and derives its powers from that Constitution and can only exercise such powers as conferred upon it by the Constitution.

The fifth leg is that the requirement in the FRA for local government funds to be deposited in an account other than the State Joint Local Government Account violates section 162 (6) of the Constitution.

The preliminary conclusion going from the ordinary meaning of the words used in the Constitution and the FRA is that the stabilisation provisions of the FRA may not pass the test of constitutionality. However, until the Supreme Court takes a decision one way or the other in the cases filed by State Governments against the continued maintenance of ECA, the legality debate will continue.

4.2.2 Nigerian Sovereign Investment Authority (Establishment etc) Act: The contributions to the NSIA seem to be founded on the consensus of the contributors especially members of the National Economic Council. The NEC is made up of the Vice President who is the chairperson, the Governors of the 36 States of the Federation, the Governor of the Central Bank of Nigeria. Clearly the Governors who are opposed to the continuation of the ECA are in the majority in NEC. Should the Governors decide against continued funding of NSIA, it may be difficult to sustain the funding of the Authority. The idea of Residual Funds in section 30 of NSIA is not recognised by section 162 of the Constitution. Thus, the Constitution never declared any funds residual and will override any attempt to delineate Federation Account funds as such, once the beneficiaries oppose the delineation. Thus, it is our position that the same arguments that apply to the legality and constitutionality of deductions for ECA apply *mutatis mutandis* to NSIA.

⁸ (2002), 6 NWLR (Pt 763) 264 at 422 para F; per Ogundare JSC

4.3 The Legislature and ECA

The same Legislature that enacted the FRA seems a little bit uncomfortable with the continued maintenance of ECA and the extant management principles. This accounts for the perennial turf war between the executive and legislature on the right benchmark price to be used in the budget. There are also arguments that withdrawing funds from ECA without legislative authorisation violates 80 (4) of the Constitution which bars the withdrawal of money from the Consolidated Revenue Fund or any other public fund of the Federation except in the manner prescribed by NASS. The fact that NASS has stated the condition under which funds can be withdrawn from ECA in section 35 (5) to (7) of the FRA is a prescription of the manner of withdrawal. NASS should rather be concerned whether the withdrawals were done after the reference commodity price fell below the predetermined level for a consecutive period of three months and whether the withdrawal was for the purpose of augmentation to bring the revenue of government to the level contained in the budget estimates.

It is submitted that it will be illegal to make withdrawals from ECA if these conditions are not met. Also, withdrawals above the need for augmentation will require appropriation by NASS before they can be spent.

5. THE TRAJECTORY OF CRUDE OIL REVENUE AND DISTRIBUTION

The revenue accruing from crude oil and sales of other petroleum and gas products have always witnessed fluctuations in the international market. The price is not determined by the producing countries but by factors and forces outside of the control of producers. For Nigeria, we simply export crude oil without adding any value through refining and harnessing of other products in the petroleum value chain. It is important to look at the inflow from crude oil sales and observe if the ECA increased with the increased price of crude oil or the sharing from the ECA increased instead. To what extent were fiscal rules contained in the FRA and NSIA obeyed during the boom period? Table 1 shows the international price for Nigeria's Bonny Light crude oil and the benchmark price between the years 2008 to 2015.

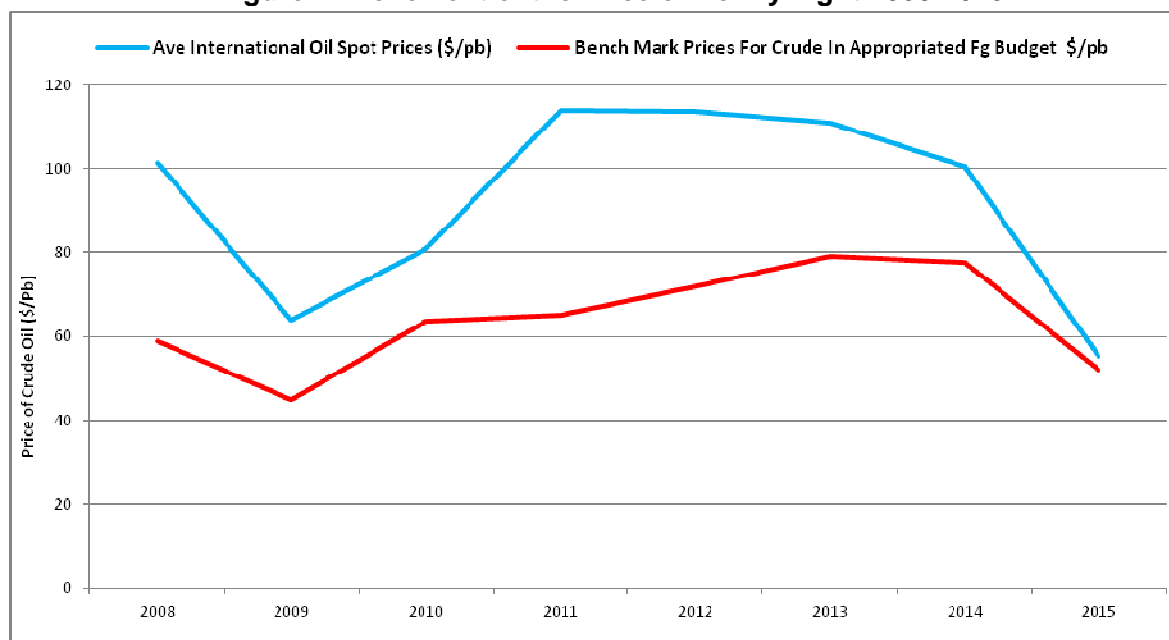
Table 1: International Spot Oil Prices for Bonny Light Crude Oil

Year	2008	2009	2010	2011	2012	2013	2014	2015
Ave International Oil Spot Prices \$/pb	101.4	63.9	80.92	113.76	113.47	110.99	100.35	55.26
Benchmark Prices For Crude In FGN Budgets \$/pb	59	45	67 later 60 (ave 63.5)	65	72	79	77.5	52
Price Difference	42.4	18.9	17.42	48.76	41.47	31.99	22.85	3.26

Source: BOF's Budget Implementation Reports 2008-2015

This is more graphically illustrated in Figure 1.

Figure 1: Movement of the Price of Bonny Light 2008-2015



Source: BOF's Budget Implementation Reports

From Table 1 and Figure 1 above, the oil price has been above the budget benchmark except in 2015 (although with fluctuations). This ordinarily should have informed an increase in the ECA. Table 2 below shows what would have accrued to ECA being the difference between the benchmark price and the actual price of crude oil worked out on a daily basis and multiplied by 365 days in a year and 366 days in a leap year.

Table 2: Expected Accruals to ECA in Millions of Dollars

Year	Actual Oil Crude Oil Production (mbpd)	Oil Price Difference (Spot vs Benchmark) \$/pb	Expected ECA Revenue Per mbp/day (\$'m)	Expected ECA Revenue Yearly (\$'m)
2009	2.13	18.9	40.257	14,693.81
2010	2.57	17.42	44.7694	16,340.83
2011	2.33	48.76	113.6108	41,467.94
2012	2.24	41.47	92.8928	33,998.76
2013	2.4	31.99	76.776	28,023.24
2014 Q2	2.21	22.85	50.4985	9,190.73

Source: Central Bank of Nigeria Statistics and Budget Office of the Federation Reports

It is imperative to examine if there was an increase in ECA during this period of high prices in order to get an informed opinion as to the correlation between high prices and savings in the ECA. Ideally, from Tables 1 and 2, a lot of savings should have accrued. Table 3 tells the story.

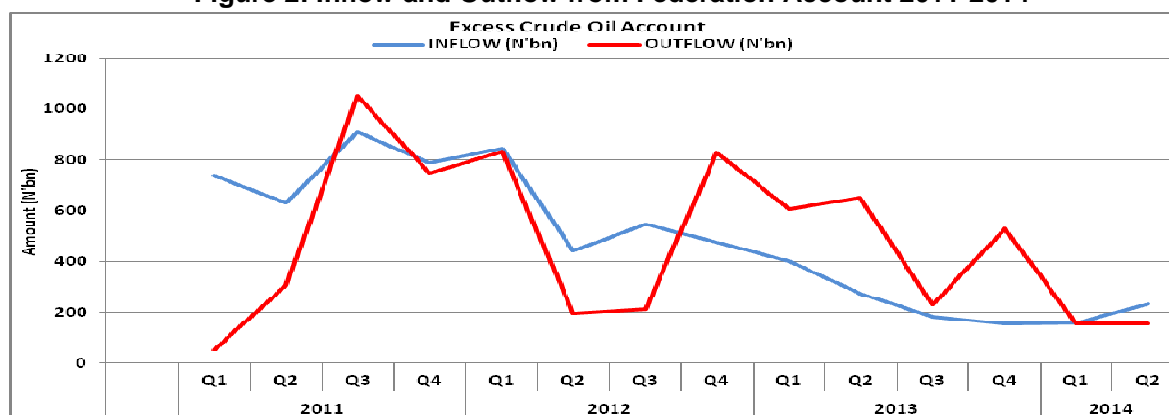
Table 3: Excess Crude Account: Inflow and Outflows 2011 – 2014 Q2

YEAR	QUARTERS	INFLOW (N'bn)	OUTFLOW (N'bn)	DISTRIBUTED COMPONENTS OF THE OUTFLOW (N'bn)		
				Payment for Petroleum Subsidy	Augmentation Distribution among Tiers of Govt.	Transfer for Special Intervention Fund (SIF)
2011	Q1	739.4	49.41	41.4	8.01	0
	Q2	628.71	305.59	35.1	265.9	4.5
	Q3	911.41	1050.44	150.82	793.67	0
	Q4	789.32	749.07	42	707.07	0
2012	Q1	847.91	831.4	149	674.11	8.29
	Q2	440.96	194.15	29	165.15	0
	Q3	545.08	212.75	21	154.87	36.88
	Q4	474.8	828.39	284	398.98	145.41
2013	Q1	400.92	606.12	50	485.02	71.1
	Q2	273.15	651.47	110	434.82	106.65
	Q3	181.34	228.67	110	12.02	106.65
	Q4	156.03	528.98	253	154.75	121.23
2014	Q1	158.45	154.88	48.23	106.65	0
	Q2	231.27	155.17	44.97	106.65	3.55
TOTAL		6,778.75	6,546.49			

Source: BOF's Budget Implementation Reports 2011 – 2014 Q2

The facts in Table 3 are graphically demonstrated in Figure 2.

Figure 2: Inflow and Outflow from Federation Account 2011-2014



Source: Budget Implementation Reports 2011 – 2014 Q2

From Table 3 and Figure 2 above, it is clear that the more revenue inflow into the ECA, the more revenues withdrawn by Government. From a total inflow of N6.77trillion, N6.55trillion was withdrawn. The propensity to consume and spend was as high as the propensity to save. Thus, the country was spending what should have been saved in ECA. This is a clear evidence of a consumption driven fiscal regime. At a time when the country should be saving, it was busy depleting the fiscal buffers. From the figures in Tables 1 and 2, Nigeria should have saved the sums accruing over and above the benchmark price and this should have left very healthy fiscal buffers. The massive depletion of the ECA has led to the current situation where all the tiers of government (after the decline of oil prices) are finding it difficult to implement budgets and meet their statutory obligations. Table 4 shows projected versus actual crude oil production between 2008 to the second quarter of 2014.

Table 4: Projected and Actual Oil Production 2008-2014 Q2

Year	Projected Oil Production (mbpd)	Actual Oil Crude Oil Production (mbpd)
2008	2.45	2.17
2009	2.292	2.13
2010	2.25	2.57
2011	2.3	2.33
2012	2.48	2.24
2013	2.52	2.4
2014 Q2	2.39	2.21

Source: Budget Implementation Reports 2009 – 2014 Q2

Apparently, the actual crude oil production fell short of the projections in 3 out of the 5 full years detailed in Table 4. But in 2 years, notably 2010, 2011, the actual production was in excess of the projections. But the rate of withdrawals from the ECA which should be for augmentation of shortfalls cannot be justified by the difference between the projections and the actual crude oil production. Evidently, the rule for withdrawals for augmentation after a three month consistent decline of the price of crude oil provided in the FRA was abandoned. According to a Study⁹:

The late President Umaru Yar'Adua withdrew funds to appease state governors demanding access to the ECA balance. Federal and State authorities reached a so-called gentleman's agreement that permitted 80% of the inflows to be distributed across the three levels of government. Since then, the balance has quickly been depleted, and the governors enjoy regular transfers from the country's "savings." President Goodluck Jonathan has continued this practice - authorising a \$2 billion outlay was one of his first actions as Acting President. These withdrawals contribute to damaging instability in state-level incomes.

Crude oil price decreased to \$45.48/pb on Monday September 7 2015 from \$46.05/pb the previous trading day. Crude oil averaged \$40.05/pb from 1946 until 2015, reaching an all time high of \$145.31/pb in July of 2008 and a record low of \$1.17/pb in February of 1946.

Just as oil prices continue to be on the decline below \$53/pb, Nigeria's oil production as well as demand has also been on the decline. We have barges of unsold cargoes in the high seas. It is clear that the mainstay of the Nigeria economy which is oil is indeed losing its value. Having failed to save during the boom in oil price, we have to seek other sources of revenue to sustain the economy.

6. THE SOVEREIGN WEALTH/STABILISATION FUNDS OF COUNTRIES

Many countries in the world understand and appreciate the importance of saving for the future, building wealth and creating fiscal buffers for stabilisation in times of crisis. Table

⁹ "Sovereign Wealth Fund Requires Legal Standing, Binding Rules and Transparency" by CSEA and Revenue Watch

5, from the Sovereign Wealth Fund Institute shows countries, the name of the fund, assets value, inception and origin or source of funding.

Table 5: List of Countries and their Sovereign Wealth Funds

Country	Abbreviation	Fund	Assets US\$Billion	Inception	Origin
Norway	GPF	Government Pension Fund - Global	882	1990	Oil
United Arab Emirates Abu Dhabi	ADIA	Abu Dhabi Investment Authority	773	1976	Oil
China	CIC	China Investment Corporation	746.7	2007	Non-commodity
Saudi Arabia	SAMA	SAMA Foreign Holdings	671.8	1952	Oil
Kuwait	KIA	Kuwait Investment Authority	592	1953	Oil
China	SAFE	SAFE Investment Company	547**	1997	Non-commodity
Hong Kong	HKMA	Hong Kong Monetary Authority Investment Portfolio	400.2	1993	Non-commodity
Singapore	GIC	Government of Singapore Investment Corporation	344	1981	Non-commodity
Qatar	QIA	Qatar Investment Authority	256	2003	Oil
China	NSSF	National Social Security Fund	236	2000	Non-commodity
Singapore	TH	Temasek Holdings	193.6	1974	Non-commodity
United Arab Emirates Dubai	ICD	Investment Corporation of Dubai	183	2006	Oil
United Arab Emirates Abu Dhabi	ADIC	Abu Dhabi Investment Council	110	2007	Oil
Australia	AFF	Future Fund	95	2006	Non-commodity
Russia	RRF	Russian Reserve Fund	88.9	2008	Oil
South Korea	KIC	Korea Investment Corporation	84.7	2005	Non-commodity
Russia	RNWF	Russian National Wealth Fund	79.9	2008	Oil

Country	Abbreviation	Fund	Assets US\$Billion	Inception	Origin
Kazakhstan	S-K JSC	Samruk-Kazyna JSC	77.5	2008	Non-commodity
Kazakhstan	KNF	Kazakhstan National Fund	77	2000	Oil
United Arab Emirates Abu Dhabi	IPIC	International Petroleum Investment Company	66.3	1984	Oil
United Arab Emirates Abu Dhabi	MDC	Mubadala Development Company	66.3	2002	Oil
Libya	LIA	Libyan Investment Authority	66	2006	Oil
Iran	NDF	National Development Fund	62	1999	Oil
United States of America Alaska	APF	Alaska Permanent Fund	53.9	1976	Oil
Algeria	RRF	Revenue Regulation Fund	50	2000	Oil
Malaysia	KN	Khazanah Nasional	41.6	1993	Non-commodity
Brunei	BIA	Brunei Investment Agency	40	1983	Oil
United States of America Texas	PSF	Permanent School Fund	37.7	1854	Public Lands
Azerbaijan	SOFAZ	State Oil Fund of the Republic of Azerbaijan	37.3	1999	Oil
Ireland	NPRF	National Pensions Reserve Fund	27.4	2001	Non-commodity
France	SIF	Strategic Investment Fund	25.5	2008	Non-commodity
New Zealand	NZSF	New Zealand Superannuation Fund	21.8	2003	Non-commodity
United States of America New Mexico	NMSIC	New Mexico State Investment Council	19.8	1958	Non-commodity
Iraq	DFI	Development Fund for Iraq	18	2003	Oil
Canada Alberta	AHSTF	Alberta Heritage Savings Trust Fund	17.5	1976	Oil
United States of America Texas	PUF	Permanent University Fund	17.2	1876	Public Lands
Timor Leste	TLPF	Timor-Leste Petroleum	16.6	2005	Oil & Gas

Country	Abbreviation	Fund	Assets US\$Billion	Inception	Origin
		Fund			
Chile	SESF	Social and Economic Stabilization Fund	15.2	2007	Copper
United Arab Emirates (Federal)	EIA	Emirates Investment Authority	15	2007	Oil
Russia	RDIF	Russian Direct Investment Fund	13	2011	Non-commodity
Oman	SGRF	State General Reserve Fund	13	1980	Oil & Gas
Bahrain	MHC	Mumtalakat Holding Company	10.5	2006	Oil
Peru	FSF	Fiscal Stabilization Fund	9.2	1999	Non-commodity
Chile	PRF	Pension Reserve Fund	7.9	2006	Copper
Mexico	ORSFM	Oil Revenues Stabilization Fund of Mexico	6	2000	Oil
Oman	OIF	Oman Investment Fund	6	2006	Oil
Italy	ISF	Italian Strategic Fund	6	2011	Non-commodity
United States of America Wyoming	PWMTF	Permanent Wyoming Mineral Trust Fund	5.6	1974	Minerals
Trinidad & Tobago	HSF	Heritage and Stabilization Fund	5.5	2000	Oil
Brazil	SFB	Sovereign Fund of Brazil	5.3	2008	Non-commodity
China	CADF	China-Africa Development Fund	5	2007	Non-commodity
Angola	FSDEA	Fundo Soberano de Angola	5	2012	Oil
United States of America North Dakota	NDLF	North Dakota Legacy Fund	3.2	2011	Oil & Gas
Kazakhstan	NIC	National Investment Corporation	2	2012	Oil
Nigeria	NSIA	Nigeria Sovereign Investment Authority	1.4	2011	Oil
Panama	FAP	Fondo de Ahorro de Panama	1.2	2012	Non-commodity
Bolivia	FINPRO	Fund for Productive	1.2	2012	Non-

Country	Abbreviation	Fund	Assets US\$Billion	Inception	Origin
		Industrial Revolution			commodity
Senegal	SSIF	Senegal Strategic Investment Fund – FONSI	1	2012	Non-commodity
Palestine	PIF	Palestine Investment Fund	0.8	2003	Non-commodity
Venezuela	FEM	FEM - Macroeconomic Stabilization Fund	0.8	1998	Oil
Kiribati	RERF	Revenue Equalization Reserve Fund	0.6	1956	Phosphates
Vietnam	SCIC	State Capital Investment Corporation	0.5	2006	Non-commodity
Ghana	GPF	Ghana Petroleum Funds	0.45	2011	Oil
Gabon	GSWF	Sovereign Fund of the Gabonese Republic	0.4	1998	Oil
Indonesia	GIU	Government Investment Unit of Indonesia (Pusat Investasi Pemerintah (PIP))	0.3	2006	Non-commodity
Mauritania	NFHR	National Fund for Hydrocarbon Reserves	0.3	2006	Oil & Gas
Australia Western Australia	WAFF	Western Australian Future Fund	0.3	2012	Minerals
Mongolia	FSF	Fiscal Stability Fund	0.3	2011	Mining
Equatorial Guinea	FFG	Fund for Future Generations	0.08	2002	Oil

Source: Sovereign Wealth Fund Institute

From Table 5, it is clear that the issue of savings and investment is a common practice around the world and Nigeria is a reluctant late starter. Virtually, all major oil producers have SWFs with substantial sums tied to the production and marketing of oil. There are also SWFs that are funded from non commodity sources including pension funds. Other countries started their savings, investment and futures funds a long time ago. It would therefore not be in accordance with fit and good practices and international norms to scrap the Nigerian SWF or any other fiscal stabilisation fund. This will be a sign of fiscal indiscipline.

7. THE MANAGEMENT OF FEDERATION ACCOUNT AND ECA

Beyond legalism and empirical foundations for stabilisation funds, the challenge to the stabilisation account in ECA has been occasioned by strong suspicions that the FGN has been shortchanging other tiers of government, co-owners of the ECA, namely the States and the Local Governments. There have been loud complaints about the lack of federal accountability towards the other owners of the ECA. The FGN has also been accused of acting unilaterally in the management of the Fund. This was the foundation of the suits in the Supreme Court seeking accounts of the management of the ECA and also to declare ECA unconstitutional. In ***Attorney-General Abia State v Attorney-General Federation***¹⁰, one of the reliefs sought was:

AN ORDER directing the Government of the Federation to render forthwith full and proper accounts of accruals to and disbursement from the Federation Account for the period 2004 till date.

ALTERNATIVELY, AN ORDER directing the Government of the Federation to grant the Plaintiff or a firm of accountants engaged by the plaintiff, full and unconditional access to all accounts, books, records, or other documents relating to accruals to and disbursements from the Federation Account for the period 2004 till date.

These reliefs were sought in the belief that proper accounts of all sums that should have accrued to the Federation Account have not been rendered. Again, in the Constitution Alteration Exercise embarked upon by Seventh NASS, there were attempts supported by the States to create the office of the Accountant-General of the Federation as distinct from the Accountant-General of the Federal Government¹¹. The Accountant-General of the Federation would have been appointed by the President on the recommendation of the National Economic Council and confirmed by the Senate. The office would have been responsible for the administration and disbursement of allocations from the Federation Account to the tiers of government. The Accountant-General of the Federal Government would have been in charge of supervising and administering FGN

¹⁰ Suit No. SC 59/2008

¹¹ A new section 84 (A) and (B) of the Constitution.

accounts. The amendment by NASS got the endorsement of the States and was forwarded to the former President, Goodluck Jonathan, who refused assent to the entire Constitution Alteration Bill. This was a few days to the end of the tenure and the legislators did not have the opportunity to override his veto.

Also, the NEC in June 2015 set up a four-man committee comprising the governors of Edo, Gombe, Kaduna and Akwa Ibom states to examine the accruals into and withdrawals from the Federation Account and the Excess Crude Account from 2012 to May 2015. The committee which was set up at the 58th meeting of the Council decided to hire an international audit firm to facilitate its assignment. Thus, NEC would not have decided on this review if they were convinced that the accounts had been transparently managed.

The message from these three developments is not exactly a call for scrapping of Stabilisation Fund. Rather, it is a call for increased transparency and accountability in the management of the funds.

8. CONCLUSIONS

Stabilisation Funds are necessary for improved fiscal governance, especially for improvements in budgeting and maintaining a functional economy that serves the interest of citizens. It is also necessary for continued growth of the economy. The dependence on petroleum as a major source of government funding coupled with its price volatility calls for saving for the rainy day in a stabilisation account under legal frameworks and rules that are transparent and acceptable to all stakeholders. The boom burst cycle of expenditure across the tiers of government is not sustainable and will impair development and economic growth. The mischief in the existing law before the enactment of the Fiscal Responsibility Act and the Nigerian Sovereign Investment Authority Act continues. It is not possible to run an efficient commodity based economy without a stabilisation fund. Thus, beyond stabilisation, this calls for the diversification of the economy.

States are still reluctant to enact and implement Fiscal Responsibility Laws with only 12 out of 36 states having enacted the law since 2007. Having exhausted the savings in the ECA, the Federal, State and Local Governments have little or nothing to fall back upon in the current decline of crude oil prices. States are unable to pay salaries while FGN cannot implement the capital budget.

From the review of the legal framework, it appears *stricto sensu* that the stabilisation provisions setting up the ECA and the SWF may not stand the test of constitutionality as they seem at variance with constitutional provisions setting up the Distributable Pool Account in section 162 of the Constitution. There may be need for constitutional amendment to align ECA, the NSIA or any other stabilisation mechanism with the Constitution. Further, the current practice and management of ECA is at variance with the provisions of the FRA. However, we await the decision of the Supreme Court on the subject matter of legality and constitutionality.

The trajectory of crude oil revenue and distribution since 2008 show that we have been spending the funds in ECA at a time of high oil prices. Essentially, we refused to save and have virtually exhausted the funds in ECA. It also shows that the accounting for crude oil revenue and the funds in ECA appear not overtly transparent. So many countries in the world have SWFs which have components on stabilisation, infrastructure investments and a futures fund. Nigeria started its SWF late with a present total worth of about \$1.4bn.

States governments have a strong suspicion that FGN has been shortchanging other owners of the Federation Account and ECA. There have been loud complaints about the lack of federal accountability towards the other owners of the ECA. The FGN has also been accused of acting unilaterally in the management of the Fund. This was the foundation of the suits at the Supreme Court seeking accounts of the management of the ECA and also to declare it unconstitutional. States supported the NASS move to alter the Constitution to provide for the office of the Accountant-General of the Federation to manage the Federation Account, ECA and other Federation funds as distinct from the Accountant-General of the Federal Government. Thus, states are not

necessarily against stabilisation funds but the way and manner they have been managed.

Overall, despite the taint of unconstitutionality and illegality of the ECA and NSIA, laws are made to cure mischief in existing law or policy or where there is a lacuna in the legal framework. The boom burst lack of savings culture was one of the mischief in the law before the enactment of FRA and NSIA. The mischief is yet to go away and has become accentuated due to the poor implementation of the laws. Throwing away the remedy to the mischief without providing alternatives is not a practical way forward.

Savings remain one of the hallmark and signs of fiscal responsibility. It is an aphorism that the propensity to save is inversely related to the propensity to consume while the propensity to invest is directly related to the propensity to save. Going by the foregoing, it clear that if Nigeria desires to make steady progress, there is need to sustain a stabilisation fund for use during economic downturn.

Answering to the posers raised at the beginning of this Policy Brief; the ECA or any other stabilisation account should not be scrapped but its management and administration modified for more transparency, accountability and participation in decision making by all the owners. There is the veneer of illegality on extant stabilisation accounts which can be remedied by an amendment of the Constitution. It is not possible to run a modern fiscal regime without stabilisation or saving for the rainy day account and on the basis of this, we need to reconcile legality with practical economic reality to solve Nigeria's existential fiscal challenges.

9. RECOMMENDATIONS

The following recommendations are made with a view to ensure the fiscal stabilisation of the economy during periods of economic downturn:

(1) Section 162 of the 1999 Constitution should be amended to accommodate stabilisation funds which should be centrally managed for the whole federation.

(2) The Constitution should be amended to provide for the position of Accountant General of the Federation who will be in charge of the Federation Account, stabilisation and any other funds jointly owned by the three tiers of government whilst the Accountant-General of the Federal Government takes charge of Federal Government accounts.

(3) In the interim, the management of stabilisation funds should be done in a more transparent and accountable manner which gives monthly, quarterly, half yearly and yearly reports of accruals and withdrawals not just to the three tiers of government alone, but the entire Nigerian public. The management structure should include representatives of all the owners of the funds.

(4) NASS should rationalise the stabilisation provisions for ECA in the FRA and the stabilisation fund in the NSIA Act. One stabilisation fund will be enough.

(5) Funding for stabilisation should no longer be limited to proceeds from commodity prices but it should be based on targets and limits including revenues from other sources including taxation.

(6) There is the need for amendments and review of the Acts establishing the stabilisation funds either in the FRA or NSIA to impose sanctions for managers and operators of the fund when they violate its basic principles.

(7) In reviewing the FRA or the NSIA, a clear management and decision making structure should be established in the new Stabilization Act detailing a decision making process that involves all owners of the funds. No major decision should be left to the discretion of any appointed or elected official.

(8) States are encouraged to enact and implement sub-national Fiscal Responsibility Laws to promote prudent management of their resources. To encourage States, FGN should set up a challenge fund in the nature of grants to states that meet certain benchmarks in fiscal responsibility.

(9) There is need for the urgent diversification of the economy, especially into manufacturing and value added agriculture across its value chains.