

**THE TREASURY SINGLE ACCOUNT AND THE
SEARCH FOR EFFECTIVE REVENUE
MANAGEMENT IN NIGERIA'S OIL
AND GAS SECTOR**

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ABSTRACT

The Treasury Single Account (TSA) policy was designed to block revenue loopholes, promote transparency and accountability, prevent mismanagement of government's revenue, unify government bank accounts, improve the processing of payments and collections, and reduce borrowing costs. It aims to ensure complete, real-time information on cash resources and improves operational and appropriation's control. Despite its clear conceptual aims, its practical implementation has been fraught with several legal challenges and questions. This article examines the concept and historical origin of TSA in Nigeria as well as its application in petroleum revenue management with a view of determining its legality and constitutionality. The article further considers whether the application of TSA had occasioned conflict or confusion between the Federation Account and the Consolidated Revenue Fund as provided under the 1999 Constitution of the Federal Republic of Nigeria, as amended in the aftermath of the reform. It argues that TSA is not an account, but a policy nomenclature directed towards the compliance with sections 80 (1) and 162 (1) of the 1999 Constitution as amended. Although it is currently not provided for in any law or the Constitution, the article insists that the constitutionally recognized accounts for the payment of revenue are the Federation Account and the Consolidated Revenue Fund. TSA is a good and effective policy for the management of petroleum revenue. The article recommends a robust legal and institutional reform to secure its legality, continuity and sustainability. It urges the legislature to review some of the laws and amend the Constitution to entrench TSA in the legal regime.

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1. INTRODUCTION

Nigeria is endowed with abundant petroleum resources.¹ For many years, petroleum has remained the mainstay of the Nigerian economy. The country's oil and natural gas industry typically accounts for 75 per cent of government revenue and 95 per cent of total export revenue.² The implication of this is that issues concerning petroleum revenue management cannot be treated with levity. This underscores the need for prudent, good governance, including transparent and accountable petroleum revenue management. Petroleum revenue management deals with transparent assessment and collection, distribution, and expenditure. It also involves combating corruption in accounting for petroleum revenues in accordance with law.³

It has been uncovered through different probe panels, committees and independent research findings that Nigeria's petroleum industry is shrouded in secrecy, opaque revenue retention practices, corruption and mismanagement.⁴ This has linkages with citizens jostling for political power, control of which affords authority over petroleum wealth. Petroleum revenue is used as a means for political patronage. The mismanagement of the nation's petroleum wealth has been traced to the Nigerian National Petroleum Corporation (NNPC) and Ministries, Departments and Agencies (MDAs) responsible for regulation, development and revenue collection in the sector. It was discovered that the revenue collectors had created several loopholes through which revenues are diverted away from the Federation Account. They do this by operating several banks accounts followed by non-remittance of the revenue collected into the Federation Account, in contravention of

1 Damilola Olawuyi, *Extractives Industry Law in Africa* (Springer 2018) 1-5.

2 U.S. Energy Information Administration, "Country Analysis Brief: Nigeria" (6 May 2016) <<http://www.eia.gov/countries/cab.cfm?fips=N>> accesses 6 April 2018.

3 Law Amadi, "Law and Petroleum Revenue Management in Nigeria" (PhD thesis, University of Ibadan 2018) 18.

4 Damilola Olawuyi (n.1) 2.

the 1999 Constitution of the Federal Republic of Nigeria as amended.⁵

The Constitution creates a special account known as the *Federation Account* into which all revenues collected or received are paid, 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. However, non-compliance with this regulation has led to the introduction of the Treasury Single Account (TSA) as a means of unifying all government accounts into one to obliterate revenue retention and corruption.⁶

One of the key arguments surrounding the TSA paradigm is whether and to what extent it may create a constitutional breach due to perceived conflict and confusion between the Consolidated Revenue Fund (CRF) and the Federation Account as provided in Sections 80 (1) and 162 (1) of the 1999 Constitution.⁷ This article aims to clarify the constitutionality and legality of the TSA in the Nigerian context.

This article is structured into six sections. After this introduction, section 2 discusses the concept of TSA, with a focus on its history and purpose. Section 3 discusses the legal and policy frameworks that codify the TSA. Section 4 examines potential conflicts in the application of the Consolidated Revenue Fund and the Federation Account. It discusses the need to understand the nature of the revenue, as well as how it will be paid into each account. Section 5 proposes legal reforms that can clarify the identified contentions and ambiguities in the design and application of the TSA in Nigeria. Section 6 contains recommendations and conclusion.

2. NATURE AND HISTORICAL ORIGIN OF TREASURY SINGLE ACCOUNT CONCEPT IN NIGERIA

The development of any country depends on the transparent and

5 Constitution of the Federal Republic of Nigeria 1999 as amended Cap C23 Laws of the Federation of Nigeria, 2004.

6 Philip Olawale Odewole "Treasury Single Account: A Tool for Effective Cash Management in Nigeria" (2016) 4(6) *Journal of Finance and Accounting* <<http://article.sciencepublishinggroup.com/html/10.11648/j.jfa.20160406.13.html>> accessed 15 April 2018.

7 1999 Constitution of the Federal Republic of Nigeria LFN.

effective application of its revenue.⁸ Therefore, revenue cannot be used and applied if it is not earned. As a corollary, Public Finance Management (PFM) remains weak if a country has a fragmented system for handling government receipts and payments through the banking system.⁹ The TSA is a unified structure of government bank accounts that gives a consolidated view of government cash resources.¹⁰ It is a bank account or a set of linked accounts through which the government transacts all its receipts and payments.¹¹

A TSA is a unified structure of government bank accounts enabling the consolidation and optimum utilization of government cash resources.¹² It separates transaction-level control from overall cash management. Put differently, it is a bank account or a set of linked bank accounts through which the government transacts all its receipts and payments and gets a consolidated view of its cash position at the end of each day.¹³ It is the concentration of all government funds on one account for its proper management. In other words, it is put in place to control government financial resources and expenditure. It ensures complete, real-time information on cash resources and improves operational and appropriation's control. According to Poudel,¹⁴ TSA is related to the management of public funds, thereby enhancing the efficiency and effectiveness of public financial

8 Agustín Carstens, "The Role of Transparency and Accountability for Economic Development in Resource-rich Countries" (Regional Workshop on Transparency and Accountability in Resource Management in CEMAC Countries Malabo, Equatorial Guinea 27 January 2005) <<https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp012705>> accessed 25 June 2018.

9 Sailendra Pattanayak and Israel Fainboim, "Treasury Single Account: Concept, Design and Implementation Issues" IMF Working Paper Fiscal Affairs Department International Monetary Fund (May 2010) <<http://www.imf.org/external/pubs/ft/wp/2010/wp10143.pdf>> accessed 20 March 2018.

10 Rabi Poudel, "Treasury Single Account – An Introduction" (25 November 2012) <<http://www.rabipoudel.com.np/treasury-single-account-an-introduction.html>> accessed 10 May 2018.

11 Sailendra Pattanayak and Israel Fainboim (n.9) 3.

12 Sailendra Pattanayak and Israel Fainboim, "Treasury Single Account. An Essential Tool for Government Cash Management" Fiscal Affairs Department International Monetary Fund (4 November 2011) <<http://www.imf.org/external/pubs/ft/tnm/2011/tnm1104.pdf>> accessed 20 March 2018.

13 *ibid* 2.

14 Rabi Poudel, "Treasury Single Account – An Introduction" (25 November 2012) <<http://www.rabipoudel.com.np/treasury-singl-account-an-introduction.html>> accessed 15 April 2018.

management. It is a public accounting system under which all government revenues, receipts and income are collected into a single account maintained by the country's apex bank and all payments are done through this account.

The adoption of a TSA system by any country has overarching objectives and benefits. The objectives include minimizing transaction costs during budget execution, notably by controlling the delay in the remittance of government revenues by collecting banks, and making rapid payments of government expenses; facilitating reconciliation between banking and accounting data; exercising efficient control and monitoring of funds allocated to various government agencies; and facilitating better coordination with the monetary policy implementation.¹⁵

The laudable benefits of a TSA, which flow from its objectives result from its conceptualization to allow complete and timely information on government cash resources.¹⁶ This means that information on cash flow will be available at the actual time and complete updated balances will be available on a daily basis, which improves appropriation control. Complete and timely information ensures that the Ministry of Finance has full control over budget allocations, strengthens the authority of the budget appropriation and improves operational control during budget execution. When the Treasury has full information about cash resources, it can plan and implement budget execution in an efficient, transparent, and reliable manner. Also, it will enable efficient cash management, facilitate regular monitoring of government cash balances, and reduce bank fees and transaction costs. Reducing the number of bank accounts results in a low administrative cost for the government for maintaining these accounts, including the cost associated with bank reconciliation and banking fees. Overall, it facilitates efficient payment mechanisms.

TSA eliminates ambiguity regarding the volume or the location of government funds and makes it possible to monitor payment mechanisms precisely. It also improves bank reconciliation and quality of fiscal data. This allows for effective reconciliation between the government accounting systems and cash flow statements from the

15 *ibid* 1.

16 Philip Olawale Odewole "Treasury Single Account: A Tool for Effective Cash Management in Nigeria" (2016) 4(6) *Journal of Finance and Accounting* <<http://article.sciencepublishinggroup.com/html/10.11648.j.f.a.20160406.13.html>> accessed 15 April 2018.

banking system; and finally, lower liquidity reserves need. This reduces the volatility of cash flows through the treasury, thus allowing it to maintain a lower cash reserve buffer to meet unexpected fiscal volatility.¹⁷ The Federation Account and the Consolidated Revenue Fund are two accounts that gave credence to Treasury Single Account.

2.1 Application in Nigeria

It is globally recommended that no other government agency should operate bank accounts outside the oversight of the Treasury (Ministry of Finance).¹⁸ This is to ensure efficient cash management. The call for the establishment of Treasury Single Account (TSA) emerged under the framework of Government Integrated Financial Management Information System (GIFMIS) introduced by the former President Olusegun Obasanjo's regime.¹⁹ This led to the recommendation of TSA by the Federal Government's Economic Reform and Governance Programme in 2004 but was dumped in 2005 following intense pressure by the banking industry.²⁰

The TSA contract was eventually signed by the former President Goodluck Jonathan during his administration in 2012²¹ even though it was not implemented till November 2013 when the Central Bank of Nigeria (CBN) at its 235th Monetary Policy Committee Meeting re-introduced the idea.²² This was re-embraced by his Excellency, who on

17 *ibid* 8.

18 O. I. Eme, D.C. Chukwurah and N.I. Emmanuel "An Analysis of Pros and Cons Treasury Single Account Policy in Nigeria" (2015) 5(4) *AJBMR* (OMAN Chapter) <<https://arabianjbmr.com/pdfs/>> accessed 20 April 2018.

19 Odilim Enwegbara "An Overview of the Treasury Single Account (TSA)" (28 August 2015) <<http://www.plcng.org/legist/an-overview-of-the-treasury-single-account-tsa/>> accessed 27 April 2018.

20 Chinedu U. Okerekeoti and Emma I. Okoye, "Treasury Single Account (TSA) in Nigeria: A Theoretical Perspective" (Faculty of Management Sciences International Conference on African Entrepreneurship and Innovation for Sustainable Development Nnamdi Azikiwe University, Awka, Nigeria July 2017) <https://www.researchgate.net/profile/Emmanuel_Okoye7/publication/> accessed 25 May 2018, Ch. 38, 563.

21 Sahara Reporters, New York 2015 Treasury Single Account Signed under President Goodluck Jonathan p.1. <<http://www.sahararepoters.com>> accessed 9 April 2018.

22 Isaac Anumehi, "How Treasury Single Account (TSA) may affect the economy" (9 September 2015) <<http://www.sunnewsonline.com/new/how-treasury-single-account-tsa-may-affect-economy>> accessed 9 April 2018.

28 January 2015 directed all MDAs to switch over to Treasury Single Account. This was followed by the Central Bank of Nigeria circular dated 25 February 2015, directing all Ministries, Department and Agencies (MDAs) on the commencement of Federal Government's Independent Revenue e-Collection Scheme and to close existing revenue accounts in Deposit Money Banks (DMBs) not later than 28 February 2015 and transfer available funds to the Consolidated Revenue Fund (CRF),²³ instructions were however ignored due to lack of political will.

On 7 August 2015, there was a Presidential Order under the new regime of President Muhammadu Buhari directing all MDAs to revert to TSA by 15 September 2015 or face sanctions.²⁴ A directive that was immediately complied with and marked the debut implementation of TSA, though a policy nomenclature, not covered by any law. But directed towards the compliance to sections 80 (1) and 162 (1) of the Constitution of the Federal Republic of Nigeria, 1999.

2. LEGAL AND POLICY FRAMEWORKS FOR TSA IN NIGERIA

The legal frameworks for TSA are the laws and policies legitimizing its establishment. Law means any law enacted or having effect as if enacted by the legislature of a state and includes any instrument having the force of law, which is made under law.²⁵ Laws exist for the efficient running of society for peace, order and development. Laws can best be described as the framework upon which a civilized society runs. Policy and law are the essential frameworks upon which a society or a system within a society rest, and both are essential for enabling and structuring of that society.²⁶

23 Commencement of Federal Government's Independent Revenue E- Collection Scheme under the Treasury Single Account(TSA) Initiative circular No.BPS/CSO/CON/DIR/01/079 (CBN 25 February 2015) <<https://www.cbn.gov.ng/out/.../circular%20on%20oagf%20revenue%20collection.pdf>> accessed 15 April 2018.

24 Marcel Mbamalu and Anthony Otaru "President Buhari issues deadline on Treasury Single Account" (8 September 2015) <<http://www.ngrguardiannews.com/>> accessed 15 April 2018.

25 Interpretation Act Cap 192 Laws of the Federation of Nigeria 1990, s 18.

26 Yinka Omorogbe "Why We Have No Energy" University Lecture (Ibadan University Press Publishing House, University of Ibadan Nigeria 2008) 20-21.

Laws should support policy and should be the instruments that promote the realization of a particular policy. Indeed, law is fundamental to the success or failure of any area. Law and policy are complementary. The legal frameworks for the operation of TSA finds its full credence in sections 80 (1) and 162 (1) of the 1999 Constitution of the Federal Republic of Nigeria as amended,²⁷ sections 21, 22, 23, 25, 26, 48, 49 and 53 of the Fiscal Responsibility Act, sections 3, 5, and 16 of the Finance (Control and Management) Act, and section 6 (3) (a) of the Allocation of Revenue (Federation Account, ETC.) Act. Section 80 (1) provides that:

All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.

This provision contemplates that all other revenues or moneys raised or received by the Federation, not being those revenues within the interpretation of section 162 (10); and not being revenues or money provided by an Act of National Assembly to be paid into any other public fund, are to be paid into and form one Consolidated Revenue Fund. The Constitution recognizes two Consolidated Revenue Funds, that is, Consolidated Revenue Fund (CRF) of the Federal Government provided in section 80 (1), Chapter V, The Legislature, Part 1 (National Assembly), Division E (Powers and Control over public funds) and Consolidated Revenue Fund of the State provided in section 120 (1), Part II (House of Assembly of a State), Division E (Powers and Control over public funds).

Section 162(1) of the 1999 Constitution provides that:

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

27 Abiodun Adeyanju, “Treasury Single Account: Constitutionality and the Limitation thereof” (11 August 2015) <<http://tempoonline.com.ng/treasury-single-account-constitutionality-and-the-limitation-thereof/>> accessed 10 June 2018.

of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory Abuja.

This provision implies that the Federation (including Federal Government, States and Local Government) will mandatorily have a special account with the name “Federation Account” into which all the revenues collected by the Government of the Federation shall (that is, mandatorily) be paid. The Federation Account is provided in section 162 (1) of the Constitution, under Chapter VI (The Executive), Part 1 (Federal Executive).

However, there are exemptions from the Federation Account as clearly provided in section 162(1). These include proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigerian Police Force, the Ministry or Department of government charged with the responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja. Interestingly, this exemption does not include revenue collecting MDAs, NNPC, FIRS, NCS and DPR. For instance, section 7(4) (a) and (b) of the Nigerian National Petroleum Corporation Act²⁸ provides that the corporation shall maintain a fund, which shall consist of such moneys as may be received by the corporation in the course of its operations or in relation to the exercise by the corporation of any of its functions under this Act, and from such funds that shall be defrayed all expenses incurred by the corporation. Section 7(5) of the same Act provides that the corporation shall submit to the National Council of Ministers not later than three months before the end of each financial year estimates of its expenditure and income relating to the next following financial year. The implication of the above provisions is that NNPC can receive revenue in the course of its operations and from such money it can defray all its expenses and that such expenditure and income must arise from its annual budget approved by the National Council of Ministers.

NNPC is, indeed, legally bound to pay its gross income or revenues into the Federation Account, and it may only defray its expenses after it has been appropriated by the National Assembly and the Minister of Finance has authorized such payment vide warrants issued to the Accountant-General of the Federation. It is obvious that this law does

28 Cap N123 Laws of the Federation of Nigeria 2004.

not authorize the NNPC to defray its expenses unilaterally, without the authorization of either the National Assembly or the Minister of Finance, which it believed is the fallout of it defraying its expenses out of its gross income before paying the balance into the Federation Account.²⁹ It has been argued that Section 7 (4) of the NNPC Act authorizes the Corporation to settle its debts and expenses before remitting the balance of its income into the Federation Account. Such an argument would be untenable, as it is inconsistent with section 162 of the 1999 Constitution. It is a trite law that the Constitution is supreme and any law that is inconsistent with it will be invalid, null and void, to the extent of the inconsistency.

The correct approach to the interpretation of section 7 (4) of the NNPC Act, is to construe it subject to the provisions of sections 21 and 22 of the Fiscal Responsibility Act and sections 44 (3), 80, 81 and 162 of the Constitution of the Federal Republic of Nigeria 1999, as amended. It is submitted that when that is done, the conclusion would be that while NNPC is entitled to maintain a fund from which it may defray its expenses, it may only do so upon appropriation of funds for that purpose by the National Assembly and warrants by the Minister of Finance directing the issuance of those funds from the Consolidated Revenue Fund of the Federation. Accordingly, the practice of utilizing revenues from petroleum resources by NNPC to defray its expenses is inconsistent with Section 53 of the Fiscal Responsibility Act, which specifically prohibits such practice.

The combined effect of the aforesaid statutory provisions is arguably that NNPC must submit the estimates of its revenues and expenditures annually to the President through the Minister of Finance, who will include them in the draft Appropriation Bill to be submitted to the National Assembly for consideration and passage as Appropriation Act or Supplementary Appropriation Act. NNPC must pay its gross revenue or income into the Federation Account, and it may only defray its expenses out of its budget as passed by the National Assembly and then, only upon the authorization of the Minister of Finance through warrants issued to the Accountant-General of the Federation.

The practice of the NNPC of incurring extra-budgetary expenditure out of its revenues, purportedly relying on section 7(4) of the NNPC

29 Abubakar Sani, "Non-Remittance of N3.8 Trillion – Is NNPC Justified in Law?" (7 July 2015) <<http://www.legaloil.com/NewsItem.asp?>> accessed 11 May 2018.

Act is inconsistent with the spirit and letters of the aforesaid statutes and the Constitution. It is submitted that this practice will defeat the intendments of section 21 of the Fiscal Responsibility Act, in particular, which is to ensure that the Corporation only incurs expenditure that is appropriated by the National Assembly in the Appropriation Act. The conclusion drawn here can equally be applied to any other revenue collection agency.

Fiscal Responsibility Act 2007 is another legal plank to the Treasury Single Account. Sections 21, 22, 23, 25, 26, 48, 49 and 53 thereof, are germane to this article. Section 21 requires government corporations and MDAs to prepare an annual estimate of revenue and expenditure and submit same to the respective minister who shall forward same to the President for inclusion into the Appropriation Bill for onward transmission to the National Assembly. The intendments are that no money shall be expended out of the Consolidated Revenue Fund without appropriation into the Appropriation Act. Section 22(2) provides that the balance of the operating surplus of government corporations shall be paid into the Consolidated Revenue Fund of the Federal Government not later than one month following the statutory deadline for publishing each corporation's account. This is to disallow the withholding of government monies by the corporation. Section 22(1) authorizes government corporations to establish a general reserve fund and allocate one-fifth of its operating surplus, the balance of the operating surplus to be paid into the Consolidated Revenue Fund not later than one month following the statutory deadline of publishing each corporation's account. Section 23 (1) is to the effect that corporations surplus is classified as a federal treasury revenue.

While, sections 25 and 26 of the Fiscal Responsibility Act provides for Annual Cash Plan (ACP) and Disbursement Schedule (DS), respectively, Section 25 mandates the Federal Government to draw up in each financial year, an annual cash plan to be prepared by the Accountant-General of the Federation. The ACP sets out projected monthly cash flows which shall be revised periodically to reflect actual cash flows. The Annual Cash Plan is targeted towards determining if the MDAs will be able to meet up, and if not, to re-adjust the target.

Section 26, on the other hand, mandates the Minister of Finance, within 30 days of the enactment of the Appropriation Act, to prepare and publish a Disbursement Schedule derived from the Annual cash Plan to implement the Appropriation Act. The Disbursement Schedule must not deficit the Annual Cash Plan. This is to ensure that all MDAs

operate within the limit of their budget. Section 48 on its own part deals with fiscal transparency. Subsection (1) mandates the Federal Government to ensure that its fiscal and financial affairs are conducted transparently and accordingly ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances. Section 49 (3) provides that the publication of general standards for the consolidation of public accounts shall be the responsibility of the office of the Accountant-General of the Federation. It was this provision that gave the Accountant-General of the Federation power to make policy for the implementation of Treasury Single Account.³⁰ Ultimately, section 53 prohibits public corporations from utilizing petroleum revenue to defray expenditure.

Accordingly, section 3 of the Finance (Control and Management) Act,³¹ provides that the Minister of Finance is responsible for the management of the Consolidated Revenue Fund. Similarly, section 5 provides that the management of the Consolidated Revenue Fund shall be conducted in accordance with the financial provisions of the Constitution and the Finance (Control and Management) Act. While section 16 of the same Act provides that any money not expended by MDAs at the expiration of the financial year shall accrue or be returned to the Consolidated Revenue Fund.

Another imperative legal framework for the TSA is the Allocation of Revenue Act (Federation Account, etc.).³² The Act is clear from the nomenclature. Section 10 states that "Federation Account" means the Federation Account established under section 162 (1) of the 1999 Constitution as amended in 2011. Section one recognizes the Federation Account and provides how the amount standing to the credit of the Federation Account, less the sum equivalent to 13 per cent of the revenue accruing to the Federation Account directly from any natural resources as a first line charge for distribution to the beneficiaries, that is, the Federal, States and local governments.

30 Fiscal Responsibility Act 2007.

31 Cap C23 Laws of the Federation of Nigeria, 2004.

32 Cap A15 Laws of the Federation of Nigeria, 2004.

3. CONSOLIDATED REVENUE FUND (CRF) AND FEDERATION ACCOUNT (FA)

The Consolidated Revenue Fund is the term used for the main bank account of the Federal Government in many of the countries in the Commonwealth of Nations.³³ It is so named because it consolidates a number of existing accounts. It was first established by the Treasury in England and was formerly known as The Account of Her Majesty's Exchequer.³⁴ In England, the legal term Consolidated Fund refers to the amount of credit held in this particular account.³⁵ In Nigeria, the Constitution provides for two Consolidated Revenue Funds. The Consolidated Revenue Fund of the Federal Government provided under section 80 (1), and the Consolidated Revenue Fund of the State provided under section 120 (1) of the Constitution of the Federal Republic of Nigeria as amended. The focus of this article is on the Consolidated Revenue Fund of the Federal Government, and that of the State is narrowly explained. Consolidated Revenue Fund of the federation belongs exclusively to the Federal Government.³⁶ It is the Federal Government purse into which all government income and receipts are paid and from which expenditure is allocated. The Consolidated Revenue Fund refers to an account into which receipts of the tiers of government from both Federation Account and the Internally Generated Revenues (IGR) are paid. It is defined succinctly as one fund into which shall come the supply of every service.

The Consolidated Revenue Fund of the Federation is the account from which the Federal Government draws its expenditure, and this expenditure must be included in the annual budget or estimate.³⁷ Any amount not included in the annual budget cannot be drawn from the Consolidated Revenue Fund. The annual expenditure of government corporations must pass through budgetary procedures and included as part of the annual estimate. The estimate must be expended through the Consolidated Revenue Fund. The corporations and revenue

33 Consolidated fund <https://en.wikipedia.org/wiki/Consolidated_Fund> accessed 14 June 2018.

34 *ibid* 1.

35 *ibid* 1.

36 That is for the purpose of this article. There is also the Consolidated Revenue Fund of the State.

37 Constitution of the Federal Republic of Nigeria 1999 as amended, s.80.

collection agencies cannot withdraw money not included in the annual budget. The payment of revenue meant for the Federation Account into the Consolidated Revenue Fund is inconsistent with the Constitution and therefore, illegal.

The management of the Consolidated Revenue Fund is the responsibility of the Minister of Finance, and such management shall be conducted in accordance with the 1999 Constitution.³⁸ Any amount provided in the Appropriation Act or Supplementary Appropriation Act not expended by MDAs shall be returned, repaid or accrue to the Consolidated Revenue Fund at the expiration of the year of appropriation.³⁹ The operating surplus of government corporations must be returned or accrue into the Consolidated Revenue Fund.

Consolidated Revenue Fund is provided in section 80 (1) of the Constitution thus: “All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.” This provision envisions that all other revenues or other moneys raised or received by the Federal Government, not being those revenues within the contemplation of section 162 (10); and not being revenues or money provided by an Act of National Assembly to be paid into any other specific fund are to be paid into and form one Consolidated Revenue Fund. These include revenues⁴⁰ or monies outside the provisions of section 162 (10), Federal Government share from the Federation Account, operating surplus of federal government corporations, loans, grants, donations etc. A fund of this nature must have an account. The name of the account is Consolidated Revenue Fund (CRF), and no other name.

38 Finance (Control and Management) Act Cap16 Laws of the Federation of Nigeria 1990, s.3 and s. 4.

39 *Supra*, s. 6.

40 Revenues is defined in section 162 (10) thus; “For the purpose of subsection(1) of this section, “revenue” means any income or return accruing to or derived by the government of the federation from any source and includes any receipt, however described, arising from the operation of any law; any return, however described, arising from or in respect of any property held by the Government of the Federation; any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any Company or statutory body”.

The essence of this “fund” or “account” is for the National Assembly to have control and oversight over the executive use of the fund. No money can be withdrawn from the Consolidated Revenue Fund except such expenditure has been charged by the Constitution, authorized by an Appropriation Act, Supplementary Appropriation Act or Act passed in pursuance to section 81 of the 1999 Constitution.⁴¹ The Constitution further provides that no moneys can be withdrawn from the Consolidated Revenue Fund unless the issue of those moneys has been authorized by an Act of the National Assembly⁴² and that no money can be withdrawn from the Consolidated Revenue Fund except in a manner prescribed by the National Assembly.⁴³

Consolidated Revenue Fund of the State is provided in section 120 (1), part II (House of Assembly of a State) division E (Powers and Control over public funds). This means that the provisions under this division are dealing with the House of Assembly powers and control over public funds. Section 120 (1) provides that “All revenues or other moneys raised or received by a State (not being revenues or other moneys payable under this Constitution or any law of a House of Assembly into any other public fund of the State established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the State.”

The provision contemplates that all other revenues or other moneys raised or received by the State Government, including states’ share from the Federation Account, internally generated revenue, revenues or money not being provided by any law of a House of Assembly to be paid into any specific fund of the State shall be paid and form one Consolidated Revenue Fund of the State. The name of the account is Consolidated Revenue Fund of the State.

The essence is for the State House of Assembly to have control and oversight over executive use of State funds. No money can be withdrawn from the Consolidated Revenue Fund of the State except to meet expenditure charged upon the fund by the Constitution or authorized

41 Section 80 (2).

42 Section 80 (3); In this case the National Assembly may make law, for instance the Internally Displaced Persons Act, where the law will provide that certain amount be withdrawn from the CRF to rebuild towns and villages.

43 Section 80 (4); The National Assembly can by an Act or resolution direct that certain amount be withdrawn from the Consolidated Revenue Fund.

by an Appropriation Law, Supplementary Appropriation Law or Law passed in pursuance of section 121 of the Constitution.⁴⁴ The Constitution further states that no money can be withdrawn from the Consolidated Revenue Fund of the State unless the issue of those money has been authorized by a law of House of Assembly⁴⁵ of a State and the manner prescribed by the House of Assembly.⁴⁶

The Federation Account, on its part, is a special account of the federation. It is the Federal, State and Local governments' revenue account. The Federation Account is the Federal Treasury Account that revenues from crude oil sales both domestic and export, royalties, signature bonus, penalty for gas flared, rentals, miscellaneous oil receipts, petroleum profit tax, company income tax on gas, value-added tax (VAT), withholding tax (WHT), import duty, excise duty, fees, custom penalty charges, and so on flow into. It is the only account by virtue of the Constitution where all revenues collected by the Government of the Federation or its agents are paid into. Except for the proceeds from the personal income tax of the personnel of the armed forces of the federation, the Nigerian Police Force, the Ministry or department charged with the responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.

All revenues earned according to the Constitution must be paid into the Federation Account. The Federation Account is otherwise known as "Distributable Pool Account" (DPA). The proceeds and income accruable to the Federation are paid into this account whether such revenues are from petroleum or non-petroleum sources. The beneficiaries of the Federation Accounts are the Federal, State and Local Governments with the Federal Government as trustees of the Federation Account which is accountable to other beneficiaries of the Federation Account, as was held in *Attorney General of the Federation v. Attorney General of Abia State & 35 Others*.⁴⁷ However, FCT Abuja is not a beneficiary of the Federation Account.⁴⁸

It is clear from the Constitution that there is no account known as Treasury Single Account (TSA). TSA is a policy nomenclature directed

44 Section 120 (2).

45 Section 120 (3).

46 Section 120 (4).

47 (No. 2) (2002) 6 NWLR (Pt.764) SC 542. This is the judicial backup to section 163 of the 1999 Constitution as amended.

48 *Supra*.

towards the observance of Sections 80 (1) and 162 (1) of the 1999 Constitution as amended. Accordingly, every other account for the purpose of payment of revenue should collapse into the Federation Account as lucidly provided under Section 162 (1) of the Constitution, for distribution in compliance with section 162 (2) thereof.⁴⁹

The management of the Federation Account lies with the National Assembly,⁵⁰ Revenue Mobilization Allocation and Fiscal Commission (RMAFC), Federation Account Allocation Committee (FAAC) and the Accountant-General of the Federation. The legal consequences or Constitutional implication for the creation of a special account for the Federation under section 162 (1) of the Constitution is to mandatorily empower the National Assembly to supervise and authorize the distribution of the Federation Account.⁵¹

Section 162 (2) of the Constitution directs the President upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission to table before the National Assembly proposals for revenue allocation from the Federation Account. RMAFC, by paragraph 32 (a) of the Third Schedule, Part 1 of the Constitution which is in tandem with section 6 (1) (a) of RMAFC Act,⁵² is to monitor the accruals to and disbursement of revenue from the Federation Account. To carry out this duty effectively, the Commission is a statutory member of Federation Account Allocation Committee (FAAC),⁵³ and have the power to demand and obtain relevant information, data or returns from any government agencies, including NNPC, NCS, FIRS and CBN.⁵⁴ However, the Court of Appeal has held that the authority and responsibility of RMAFC to monitor the accruals to and disbursement of revenue from the Federation Account do not include the power to institute an action in court.⁵⁵

49 Marcel Mbamalu, "TSA: FG Operated Illegal Accounts for 48 years" (7 September 2015) <<http://www.nguardiannews.com/2015/09/tsa-fg-operated-illegal-accounts-for-48-years/>> accessed 10 2018.

50 Constitution of the Federal Republic of Nigeria 1999 as amended, s.162 (1)(2).

51 A.M. Odje, "Excess Crude Account, 1999 Constitution and the Rule of Law" (20 July 2015) < <http://www.nigerianlawguru.com> > accessed 20 April 2018.

52 Revenue Mobilization Allocation and Fiscal Commission Act Cap R7 Laws of the Federation of Nigeria, 2004.

53 *Supra*, section 6 (2) (a) (i).

54 *Supra*, section 6 (2) (b).

55 *Revenue Mobilization Allocation and Fiscal Commission v. Attorney-General of the Federation & 4 Others* (2014) LPELR [24105] CA 37.

The Federation Account Allocation Committee, on its part, is established under section 6 (1) of the Allocation of Revenue (Federation Account, ETC) Act⁵⁶ to ensure that allocations made to the States from the Federation Account are promptly and fully paid into the treasury (Consolidated Revenue Fund) of each State on the basis and terms prescribed by this Act, and to report annually to the National Assembly in respect of the function specified in the above paragraph.⁵⁷

The Office of the Accountant-General of the Federation (OAGF) tangentially manages the Federation Account. The Accountant-General of the Federation is the chief accounting officer. He is charged with the constitutional role of preparing the nation's financial statements arising from collection and receipt of income, fees, rentals and taxes and payment out of the Federation Account. The OAGF, therefore, is the executive arm of government responsible for maintaining records for all revenues and receipts and payments into and out of the Federation account.⁵⁸

The procedures and processes for the management of the Federation Account are inter-alia: the revenue collecting agencies such as Federal Inland Revenue Service, Nigeria Customs Service, Nigerian National Petroleum Corporation, and Department of Petroleum Resources collect revenue or monies piece-meal and deposit them with the Central Bank of Nigeria, where all the accounts are kept. NNPC opens a revenue collecting account with the CBN and monies continue to accrue into the account. All the monies are credited into the Federation Account less than 24 hours to the Federation Account Allocation Committee (FAAC) meeting, and sometimes they are credited into the Federation Account on the day of the meeting.

All the collections from each of the agencies of government that is charged with the responsibility of revenue collection will be reconciled at two levels before money accrues, ahead of the FAAC meeting. The first-level is the Revenue Reconciliation Committee, which consists of all the revenue collecting agencies. They meet in the Office of the Accountant-General of the Federation to reconcile accounts. The second-

56 Allocation of Revenue (Federation Account, ETC) Act Cap A15 Laws of the Federation of Nigeria, 2004.

57 *Supra*, s. 6 (3) (a)(b).

58 Sada, Idris and Company, "Physical and Process Audit for the Period 2009 to 2011" Presented to NEITI. Abuja, Nigeria (May 2013) <<http://www.neiti.org.ng>> accessed 17 April 2018.

level is another committee chaired by the Revenue Mobilization Allocation and Fiscal Commission, which meet with all the revenue collecting agencies to reconcile accounts.⁵⁹

In practice, the ideal method of implementing the Treasury Single Account is that the International Oil Companies (IOCs) pay to the revenue collecting Ministries, Departments and Agencies (MDAs) accounts through the commercial banks. The funds are automatically transferred into the Federation Account (TSA) within the Central Bank of Nigeria (CBN) by the end of the day. The commercial bank and the CBN submit account statements to Ministry of Finance and Federation Account Allocation Committee (FAAC) for reconciliation. FAAC distributes the funds at the end of the month in accordance with the Allocation of Revenue (Federation Account, ETC) Act. The funds are distributed to the Federal Government, States and Local Governments, respectively, as beneficiaries.⁶⁰ The amount to the credit of the Federal Government is paid into the Consolidated Revenue Fund (CRF) of the Federal Government in accordance with section 80 (1) and the credit standing for the States and Local Government is paid into the Consolidated Revenue Fund of the State as provided in section 120(1).

As a panacea to mismanagement and suspicion in the handling of the Federation Account, Rauf Aregbesola, the governor of Osun State, had solicited for the separation of Federation Account from Federal Government Account to avoid conflict in declaring the financial resources and distribution formula.⁶¹ Also, to help minimize the mutual suspicion and tension between the tiers of government over the management of federal revenues, Elias Mbam,⁶² the chairman of Revenue Mobilization Allocation and Fiscal Commission, had advocated for an independent agency to take charge of the Federation Account.

It is submitted that there was no conflict or confusion between the Consolidated Revenue Fund and the Federation Account in the

59 Ibrahim Dankwambo, "How We Manage Federation Account and Excess Crude Proceeds" (30 June 2007) <<http://www.nigerianmuse.com>> accessed 15 April 2018.

60 (No.2) (2002) 6 NWLR (Pt.764) SC 452 (n.47).

61 Rauf Adesoji Aregbesola, "Separate Federation Account from Federal Government Account" Convocation Lecture Fountain University (18 September 2011) <<http://www.vanguardngr.com>> accessed 12 April 2018.

62 Bassey Udo, "RMAFC Seeks Independent Manager for Federation Account" (24 October 2014) <<http://www.premiumtimesng.com>> accesses 20 April 2018.

implementation of TSA. Instead, the TSA was instituted to aid transparency and facilitate compliance with sections 80 and 162 of the Constitution of the Federal Republic of Nigeria 1999 as amended.⁶³ However, the TSA is not provided for in any law.

4. NEED FOR LEGAL REFORMS TO IMPLEMENT THE TSA IN NIGERIA

Nigeria needs robust legal reforms to meet the legal and constitutional requirement for managing the huge revenue accruing from petroleum resources through effective implementation of the Treasury Single Account. This section discusses five key legal and institutional reforms that are required to lay the groundwork for a successful and sustainable implementation of TSA in Nigeria.

4.1 Amending the Constitution of the Federal Republic of Nigeria 1999

Section 162 of the 1999 Constitution needs to be amended to clearly define and streamline the constituents of petroleum revenue and state the time frame within which revenues must be paid into the Federation Account. This will assuage revenue retention and delay in payment into the CRF and the FA by MDAs. Overhauling of laws creating the corporations and agencies is imperative. For instance, the NNPC Act, the FIRS Act and Finance (Control and Management) Act should be amended to state the time frame over which revenue generated must be paid into the Federation Account and operating surplus paid into the Consolidated Revenue Fund.

4.2 Updating the Fiscal Responsibility Act

The MDAs should be well informed of the provisions of the Fiscal Responsibility Act 2007, particularly sections 25 and 26. Section 25 deals with the preparation of the Annual Cash Plan and section 26 provides for Budget Disbursement Schedule. In section 25 of the Act,

63 Danladi Irimiya Kifasi, "Treasury Single Account Is Constitutional for Transparency" (11 August 2015) <<https://prnigeria.com/2015/08/re-introduction-of-treasury-single-account-tsa-e-collection-of-government-receipts/>> accessed 20 May 2018.

the Federal Government, through the Accountant-General of the Federation, is to prepare the Annual Cash Plan in advance of the financial year, setting out projected monthly cash flows, which shall be revised periodically to reflect actual cash flows. The preparation of the Annual Cash Plan will facilitate budget implementation because it will evolve from a cash management policy and will partly inform inflows in the TSA. Outflows and actual release and disbursements to the MDAs to underpin the Annual Cash Plan will be the cash plan of the respective revenue generating and spending MDAs.⁶⁴

Section 26 canvasses for Budget Disbursement Schedule. It mandates the Minister of Finance, within 30 days after the enactment of the budget to prepare and publish a Budget Disbursement Schedule derived from the Annual Cash Plan to implement the budget. This schedule should underpin and abide by the projected financing and implementation schedule of all MDAs. Thus, the Annual Cash Plan and Budget Disbursement Schedule will introduce the element of predictability in the disbursement of appropriated funds.⁶⁵

The Minister of Finance and the Budget Office of the Federation need to take their duties under the Fiscal Responsibility Act seriously. They are bound under the law to monitor and evaluate the implementation of the budget and report on a quarterly basis to the Fiscal Responsibility Commission and Joint Finance Committee of the National Assembly. The report is to be published in mass and electronic media not later than 30 days after the end of each quarter.

4.3 Need for a Wider Stakeholder Consultation

A broad stakeholders consultation is important. Economic and legal experts in this area must be consulted, as their advice will be useful for the full realization of the policy. Economists must be consulted to advise appropriately on the effect of the policy on the banking sector and the economy generally. A partnership with the World Bank and the International Monetary Fund (IMF) is important, because their presence will allay the fears of foreign investors.

One fundamental facet of sustainable economic and business innovation is the law. Legal teams need to be involved early enough to

64 Eze Onyekpere, "Implementing the Treasury Single Account" (17 August 2015) <<http://www.punchng.com/opinion/implementing-the-treasury-single-account>> accessed 20 May 2018.

65 *ibid* 2.

provide required guidance in policy development, offer strategic advice to the management team, start to draft the supporting documentation, engage in negotiation, and bring about the necessary legislative and regulatory change. Furthermore, legal expertise ensures that the implementation of the policy does not contradict any legislation. Two preconditions are necessary, namely the need to prepare an inventory of existing bank accounts, and the need for the government to take a census of existing bank accounts (including the name, nature, types, and cash balances).

4.4 Institutional Reforms

The government must have the political will and support to implement the policy by overhauling the capacity of the Federal Ministry of Finance, the CBN and MDAs to cope with the challenges of enforcing the TSA policy. Capacity training should be imparted to staff through seminars and workshops to build up their technological competence and the capability of the banking system to participate in the operation and the MDAs' ability to use electronic collection and payment. The government must be able to take the hard decision of closing existing bank accounts. This could lead to a liquidity squeeze and labour issues which can provoke powerful opposition. Nevertheless, it must be done through with the support of the Legislature to provide the legal and regulatory environment that is required.

The international best practice for Treasury Single Account is to have the banks transfer revenues collected to the TSA main account on the same day. This includes revenue payment by international oil companies (IOCs) through MDAs or payment disbursement by the government. The practice is to automate the payment processes and adopt electronic payment system, with direct payments to the bank account of the beneficiary. Salaries and pensions of government employees and pensioners should be paid through the electronic payment system. Every payment, whether large or small, is to be paid through bank transfer authorized by the Ministry of Finance.

The government is to provide an Interbank Settlement System (ISS), which will create a link between the Central Bank of Nigeria and the Deposit Money Banks (DMBs) or commercial banks. Also, it will be necessary to create an appropriate interface between the treasury and the banking network, establish an electronic interface between the treasury, line agencies and the banking network, and prepare a comprehensive chart of accounts.

Nigeria can learn from countries that are successful in TSA practice, such as Sweden and New Zealand. In Sweden, there are several linked bank accounts outside the TSA main account, with their balances automatically swept off at the end of each day. While, in New Zealand, the entire daily retail transactions of the TSA are performed at a commercial bank with only a single mightily sweep of the balance going into the government account at the central bank.

4.5 Need for Capacity Development

The Ministries, Department and Agencies of government need to be trained in the new procedures and applications for effective implementation of TSA. Adherence to the rule of law is germane for the TSA to be implemented effectively. The Constitution and any other law must be obeyed. Revenues collected by the Government of the Federation must be paid into the Federation Account created under section 162 (1), and revenues or other moneys raised or received by the Federal Government must be paid into the Consolidated Revenue Fund of the Federation created under section 80 (1) respectively. Similarly, the revenues and other moneys raised or received by the State Government must be paid into the Consolidated Revenue Fund of the State as provided under section 120 (1) of the 1999 Constitution.

5. CONCLUSION

Sustainable development can only be advanced in Nigeria through effective management of petroleum revenues, which should regularly be paid into the Federation Account and distributed according to the Constitution. All revenues for the federation should be paid into the Federation Account, while the federal government's share from the Federation Account and operating surplus must be paid into the Consolidated Revenue Fund. The fragmented banking arrangement for petroleum revenue by the MDAs has hindered effective cash management and control over cash balances. The TSA policy will go a long way in blocking revenue loopholes and leakages in revenue generation and promote transparency and accountability in petroleum revenue management if it is fully implemented. It will equally pave the way for the timely payment and capturing of all revenues going into the CRF and FA without the intermediation of multiple banking arrangements. The policy will also enable the Federal Government to

know its cash position at any given time without any hindrance.

TSA is not a separate account and does not create another account other than the one provided by law. However, it reinforces the respect for the application of the Consolidated Revenue Fund and the Federation Account. Furthermore, there was no conflict or confusion between the Federation Account and the Consolidated Revenue Fund of the federation.

To successfully implement the TSA, the Federal Government must demonstrate political will to deal with any MDAs or revenue collection agencies that try to circumvent the policy; no MDA should be exempted from TSA. These ensure its sustainability. There should be a systematic financing programme that takes account of the special and strategic needs of the spending agencies. A haphazard release of funds or the denial of fund when an agency needs it most had been the bane of budget implementation in the country.

Similarly, the Nigerian government should overhaul the capacity of the Federal Ministry of Finance, the CBN and MDAs to cope with challenges associated with enforcement of the TSA. There must be capacity training to build up their technological know-how of staff to be able to use electronic collection and payment. Furthermore, the government should secure appropriate legislative support to amend the Constitution and other laws to facilitate the relevant regulatory environment, which will drive the effective implementation of the TSA. This legislation needs to cover the states and local government levels, too, since the policy only covers the federal level.

Finally, the success of the TSA will depend on the transparency and accountability of the Nigerian government in the award of contracts relating to the TSA. It is important for the government to award the contract for the TSA through competitive and open bidding. This will enable competent and lowest bidder selection, which in no small measure will reduce the high costs associated with the operation of the policy.