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SUMMARY

In the last one year, the decision of the Nigerian Government to establish its version of the Sovereign Wealth Funds (SWFs) - the Nigerian Sovereign Investment Authority (NSIA) Act 2011, has attracted wide discussions in the investment and development literature in Nigeria. This paper critically examined the relevance of the NSIA regime in its merit and highlighted the possible hindrances that will adversely affect its operations in the extant economic environment in Nigeria. It specifically examined the moral and legal perspective arguments to the NSIA Act of 2011 against the backdrop of the accusation of grand corruption in the country. The paper relied on the conceptual analysis approach to anchor the explanatory relevance of the philosophy behind Sovereign Wealth Funds (SWFs), combined with the use of secondary data as a method of analyzing and reviewing relevant literature. Among other things, the paper revealed that although, the idea of Nigerian Sovereign Investment Authority (NSIA) conforms with modern international investment trend among other developed and developing countries of the world, its establishment without aligning it with existing constitutional provisions is a major obstacle. This is not unconnected with the renewed move by the Governors forum in dragging the Federal Government to the Supreme Court to determine whether the former has the right to keep other Accounts different from those known to the 1999 constitution. The paper recommends among other strategies the need for the Federal Government to be more enthusiastic and vigorous in its fight against corruption to free resources for development and discipline in budgetary management. These and appropriate
constitutional provisions will provide the government with the template that will guarantee the solid economic base that can sustain the NSIA regime.

INTRODUCTION

Economists all over the world have shown convincingly in their classical theories or practical articulations that the idea of saving the future in case of any eventuality is critical in the life of an individual, firms and a nation. It is upon this premise, that in the wake of the 21st century, many nations of the world and in particular, developing nations including Nigeria embraced this philosophy termed “Sovereign Wealth Funds” (SWFs). This nation is believed among natural resources exporting nations to create a stabilizing source of funds in times of financial crunch and a pool of reserve for future generations in case of exhaustion of the objects of exports (Donghyun & Gemma, 2009:46).

In case of Nigeria, crude oil remains the major source of revenue through export. Its budgetary articulations and spending are based on the revenue from crude oil exportation. In 2004, the Nigeria Government established with fiat what it called “the excess crude account”. This was on the realization of its surplus revenue from its crude oil export. This windfall was available for preceding Governments which they spent without recourse to any modicum of accountability. Many scholars and critics have argued that the excess crude Account was illegal. Their argument was that, the 1999 constitution made provisions for a consolidated revenue Account to which all forms of revenue accruable to the Federal Government of Nigeria must be paid including the surplus revenue from crude oil exportation.

In May 2011, Nigeria joined other nations of the world operating Sovereign Wealth Funds (SWFs) to take its place in the world economy; by passing into law the Nigeria Sovereign Investment Authority (NSIA) Act 2011. The Act aimed at building a saving base for Nigerian citizens, enhancing the development of Nigerian infrastructure and providing stabilization support in times of economic stress. This Act appears to have enjoyed the statutory procedure for its establishment and thus supports its legality. It has also been criticized by scholars against the background that its sources of funding should not be the surplus from crude oil exports. There are also those who argue from the moral angle that Nigerian leaders are corrupt and lack the justification to lock up funds in such institutions in the name of investing for future generations. Nigeria requires every amount of funds it can monster now to invest in its road infrastructure, health, education, power among others (Ekweremadu, 2011:48).

This paper explores the relevance of the Sovereign Wealth Funds (SWFs) to the extant Nigeria economy by critically examining the constitutional and moral arguments to its establishment recognizing the urgent need for capital to enable the government solve the plethora of problems facing the Nigeria nation. It is therefore imperative and incumbent upon this paper to recommend possible frameworks to free resources entangled by corrupt government functionaries in
this period of numerous problems facing the country. Thus, providing a veritable platforms upon which Nigeria can effectively and justifiable operate its Sovereign Wealth Funds (SWF5) regime, and be respected in the competitive international financial system.

In the last one year, the issue of the Sovereign Wealth Funds (SWF5) had attracted many discussions in Nigeria. The Nigerian model of the (SWFs); the Nigerian Sovereign Investment Authority (NSIA) Act 2011 patterned it in line with the international guidelines or regulation of SWFs outlined by the International Forum of Sovereign Wealth Funds (IFSWF). The NSIA is required to make investments which will provide supplemental stabilization funding based upon specified criteria (Matthews, 2007:36).

Much as this NSIA Act is indicative of forward looking efforts of the current Nigerian Governments to lunch itself into the international investment system and save for her future generation; it has in the past two decades being trying to explain itself from glaring corruption charges without success. Collaborative corruption between public and private functionaries has resulted in institutional failures, infrastructural decay, sharp decline in the quality of education and health. Thus, Nigeria is faced with paucity of funds for economic development.

It is pertinent to argue sustainly that Nigeria will do well to first tackle the issue of corruption pragmatically. This will free resources that will be near adequate to put right the fast declining economic faith of Nigeria. It is at this stage of domestic economic and political sustenance that SWFs regime will make meaning to Nigeria. The problem of this paper is to articulate the causes of paucity of funds for Nigerian development and examine why it is difficult for the Nigerian Government to be proactive and strategic in its efforts at fighting corruption; to free resource for genuine development before the NSIA regime can work and be respected by her international financial investors. It is this problem that justifies the papers notion of examining the legal and moral views of the SWFs regime at this time of deflated economy that requires quick and huge financial interventions in its infrastructure.

Objectives of the Paper

The broad objective of this paper is to critically examine the relevance of the NSIA regime in its merit and highlight the possible hindrances that may face its operations in the current corruption laden environment in Nigeria.

The specific objectives include: It examines the legal and moral arguments of the NSIA Act of 2011 against the backdrop of the accusation of grand corruption in Nigeria; It articulates clearly the need to mop up and plug leakages that will free resources for national economic development that will put Nigeria on equal pedestal with her international competitors. And It provides the operators of the Nigeria’s economy with the strategies that will create the template that will guarantee the economic base that can sustain the NSIA regime.
Conceptual Analysis

This paper adopted the conceptual clarification approach in situating the (SWF5) discussion. This is because, it is a relatively new phenomenon in the international investment literature. The Sovereign Wealth Funds (SWFs) in its merits means the common wealth of the people. Thus, it is the resources that accrue to a people but entrusted in the Sovereign (Government) to provide the good life for the people (Green & Torgerson, 2009:19).

According to Lowery (2007:12), Sovereign Wealth Funds is defined as “government vehicles funded by foreign exchange earnings but managed separately from foreign reserves”. In his view, SWFs differ from other government vehicles in their objectives, terms and holding. While foreign reserves have historically invested in Sovereign fixed income notes, for the purpose of intervention on the foreign exchange market, SWFs typically take a longer-term approach where international equities, commodities, and private fixed income securities are used to achieve the long-term strategies and financial goals of a Sovereign.


In the view of Bryan (2008:4) Sovereign Wealth Funds are funded through three strategies. First, through revenues on commodities owned or taxed by the government. The second is through transfer of assets from exchange reserves. Thirdly, disbursement of Sovereign debt in international markets. SWFs are therefore critical as it act as intergenerational transfer mechanism. Thus, when the country’s national resources are exhausted, future generations can continue to live prosperously using the earning of their fore fathers. Most SWFs serve to diversify a country’s income so that it can respond to stocks to the country’s comparative advantages (Brooks, 2007:16). Brooks argues that SWFs in their objectives clearly seek to promote investment from multinational corporations and technological transfer to domestic industries. This goal is accomplished through acquiring a majority stake in a company or form a coalition with other shareholders (Ocampo, 2007:16). Ordinarily, conceptualizing the notion and objectives of SWF5 in the above manner, it can be described as an encouraging and forward looking effort to reposition the Nigeria economy through the establishment of its brand of SWFs — “the Nigeria Sovereign Investment Authority (NSTA) Act in 2011”. While the Nigerian government may be commended for its effort to catch up with emerging economies through investment diversification, it will not be out of place to argue
that Nigerian social, economic and political environment still remains very hostile to the operations of SWF5. This negative perception derives from the lack of transparency in institutional operations, grand corruption, growing insecurity, infrastructural decay, and dwindling international image. Stemming from the above notion, the Nigeria brand of Sovereign Wealth Funds Nigeria Sovereign Investment Authority (NSIA) Act 2011, has been criticized that its goal of building a financial base that can be used to respond to shocks in comparative advantages is misguided. Thus, it makes much more sense to invest now to diversify a country’s economy and protect it against possible comparative advantage shocks than to create an “endowment” to rebuild an economy once a shock occurs (Kern, 2007:10). Therefore, it appears encouraging to embrace the philosophy behind the establishment of the NSIA. But its success is dependent on the universal principles of integrity, transparency supported by domestic environment that is socially, economically and politically secured.

**Constitutionality or Otherwise of the Nigeria Sovereign Investment Authority (NSIA) Act 2011**

In May 2011, the Nigerian Government passed into law the Nigerian Sovereign Investment Authority (NSIA) Act 2011. The “Act” aimed at building a savings base for Nigerian citizens, enhancing the development of Nigerian infrastructure providing stabilization support in times of economic stress, and carrying out such other matters as may be related to the objects. The activities of government in any civilized nation that upholds the principles of the rule of law must conform with the due process before getting legitimacy or the force of law. Otherwise, its activities will become unenforceable and illegal (Truman, 2007: 15-17).

Specifically, under section 162(1) of the 1999 constitution, it is lucidly provided that “The Federation shall maintain a specific and special account to be called the Federation Account” into which shall be paid all revenue 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 Nigerian Police Force, the Ministry or Department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory Abuja. Akpo, (2011:35) had convincingly argued that subsection (10) of the 1999 constitution defines “revenue” for our own purpose as “income or returns accruing to or derived by the Government of the Federation from any source...”. In his view, the application of the literal canon of interpretation to the above provisions, its therefore lucid that there shall be a Federation Account into which “all revenues” must be paid.

The exception as stated above 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. It is therefore constitutionally clear that these exceptions do not provide for any
proceed for the Sovereign Wealth Funds or Excess crude oil revenue account. With the provision in section 162 (1), it becomes an illegality for the Federal Government to set aside any amount for the Sovereign Wealth Funds without first addressing the constitutional provision. It was the same spirit that the “Excess Crude Oil Account” was created by former President, Chief Olusegun Obasanjo in September 2004; which President Goodluck Jonathan now transformed into the Nigerian Sovereign Investment Authority (NSIA) Act 2011.

The Federal Government of Nigeria may be exercising its constitutional powers by establishing an institution like the new (NSIA) in its renewed efforts at diversifying its investment drive, but it becomes constitutionally conflicting with existing provisions of section 162 of the 1999 constitution of the country, which is unknown to any other Account into which Federal revenues are paid. The Federal Government cannot do otherwise except that section of the constitution is either amended or repealed to allow for the Government notion of the NSIA. This section of the paper therefore admonishes the novel attempt by the Nigerian Government to establish the NSIA that will position its investment windows to the world. The Act permits for some percentage of all money accruing from crude oil sales to the Nigerian state to be invested through three special funds viz: Nigeria Infrastructure Fund, the Future Generation Fund, and Stabilization Fund. Germane as the NSIA Act may look in its aim and objectives, it is clearly an infringement on section 162 of the 1999 constitution as highlighted in sundry paragraph.

Therefore, no reasonable or patriotic Nigerian will raise any objection towards genuine arrangements to save for the rainy day. However, such an arrangement must conform with the due process of the law. Thus, until the constitution, particularly sections 162(1), 162(2) (the provision) and 162(10) are further amended, the Nigerian Sovereign Investment Authority (NSIA) Act 2011 will be attacked variously as unconstitutional, like its counterparts, the Excess Crude Oil Account.

Moral Justification or Otherwise of the Nigerian Sovereign Investment Authority 5(NSIA) Act 2011

It is with immense justification to advise that for an individual, a firm or a country hoping or inspiring for greatness is expected to save part of its current earning for investment or as stabilization assets. It is in line with the above philosophy that Nigeria in 2011 joined its world counterparts in establishing its form of Sovereign Wealth Funds (SWFs). Much as the argument supporting the establishment of the NSIA, relying on the universal principles and purposes for savings as adumbrated in the NSIA Act 2011, the Act has also been variously criticized as to whether it is relevant to the Nigerian economy at this time when the nation is faced with myriads of problems in almost all aspects of its national life. Thus, it requires immediate capital investment in all its sector rather than investing in ventures that are strategic.
One of the moralist who criticizes the SWFs on moral grounds was Ekweremadu,(2011:48) and captured Nigeria of the 21st century as:

Staggering in its huge size, dazed by the reality of the huge resources, stupefied in its drunken state of unfocused programmes, wobbling like an arrested felon who is dragged about by a drunken law enforce and ignorant of the gravity of threat to its existence.

The above articulation by Ekweremadu is a summary of the dept of degradation facing Nigeria in the 21st century. These degradations are epitomized in poor and declining quality of education, almost lack of security of life and property, bad roads and poor transportation system, epileptic power supply and grand corruption. Yusuf, (2011:3) was corroborating the above assertion when he writes that:

the university serving the present generation, seemingly preparing the future generations are so crude, disorganized and decaying; their degrees and diplomas rejected elsewhere in the world. The same youth of today watch helplessly as their aged parents, retired but denied of their pensions, stager to the endless pension verification centers, where many die of frustration, exhaustion and despair.

The foregoing articulations clearly depict the current state of the Nigerian economy which requires that the current crop of leaders, must muster as much capital as possible to rebuild its infrastructure, attend to insecurity, corruption image laundering, etc. Thus, it will be morally bankrupt to pursue issues that are strategic like large vestment portfolios rather than ensuring that better life is secured for the citizenry at present.

The notion of this moral view is not to condemn the philosophy behind the Nigerian Sovereign Investment Authority (NSI&), but argue that the Nigerian government should pause and attend to more urgent issues that will free resources for real investment in the economy; it is on a sound economic foundation that international competitive investment pursuit can be made and sustained.

Although, President Goodluck Ebele Jonathan inherited the excess crude Account from his predecessors, he had recently been dragged to court by the Governors forum. Their plea is that the “excess crude Account” is unknown to the 1999 constitution and therefore illegal. The substance of their argument is that they require more funds for development at their lower level. Thus, the excess crude revenue be shared and utilised or otherwise. The legality of the excess crude Account has being attacked variously by different legal analyst, yet the Federal Government has not bulged, until recently when its team of Lawyers have approached the Supreme Court for the possibility of settling the matter out of court
with the Governors. This recent position of the Federal Government is a major pointer to the fact that it has accepted to committing major breaches to various sections of the 1999 Constitution.

**Conclusions and Recommendations**

While the operations of Sovereign Wealth Funds (SWFs) in most developed and developing countries of the world have made important contributions to the rapid industrialization and economic growth, emphasis must be paid to the fact that most of these countries have fairly stable economic and political situations as well as fairly acceptable balance of payment record (Stephany and Ocampo, 2007:29). They have to a reasonable extent overcome such factors as institutional corruption, political insecurity, dearth of international image, balance of payment deficit, decay in infrastructural facilities like roads, power supply and education. Nigeria must be commended for the bold effort made for articulation of the idea of establishing the NSIA that will help to galvanize its international investment opportunities which will in future help to boost its revenue portfolios. But the germane idea may be handicapped by the glaring fact that issues of corruption, insecurity, infrastructural decay and poor international image will truncate the smooth operation of the institution. Thus, its noble objectives may not be achieved unless these identified and intricate issues are resolved to provide a solid base upon which such idea can take effective root and operative with success.

It is upon the foregoing that this paper makes the following recommendations.

(i) The government should first of all resolve the constitutional issue of either repealing or amending the original provision of the section 162 of the 1999 constitution. This will then give room for a new provision that will allow for the creation of a separate account from the federation Account which is the only account that is known to the constitution.

(ii) The government of Nigeria should be more vigorous and enthusiastic about the fight against corruption. It is arguable that much needed investible funds are lost through corruption by government official. A genuine effort at fighting corruption will help redeem stolen funds and check institutional leakages.

(iii) The governments both at the federal, state and local should stop paying lip service to issues of development. Huge budget is drawn annually yet the length and breadth of the country is littered with decayed infrastructure and abandoned projects. Necessary infrastructure like roads, water supply, electricity and education are near lacking. These have been traced to poor and bad leadership. Thus, Nigeria is still in dire need of the crop of leaders that will garner genuine political will to serve the people.

(iv) The government of Nigeria should be more disciplined in its budgetary management. Budgetary discipline should be implemented with the
object of economy. Thus, ideas of budget deficit should be minimized. Expenditures must not be more than expected revenue. This is a critical economic strategy of saving funds for development.

REFERENCES


