



# The Gravitas Review of Business & Property Law

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## AN EXAMINATION OF THE EXTENT OF LEGISLATIVE POWER IN ANNUAL FISCAL BUDGET MAKING IN NIGERIA

**Marcus Ayoodeji Araromi\***

### ABSTRACT

*This paper examines the perennial tussle between the executive and legislative arm of government in Nigeria in relation to budget making, which sometimes leads to delay in passage of annual fiscal budget. The extent of powers to be exercised by the Legislature in amending budget estimates submitted by the Executive is the crux of the dispute which often leads to diverse and conflicting opinions on whether the law permits the Legislature to tamper with the figures of the budget or whether it should be a mere rubber stamp to approve the estimated budget submitted to it by the Executive. The paper reviews the changing role of the Legislature in modern times, particularly in the presidential system of government and the involvement of the public ably represented by civil society organisations in determining financial policies that will drive annual budgets. The paper submits that due to absence of clear provisions of the law to determine the extent of powers of the Legislature to amend budgets, it may be necessary to amend the Constitution to clearly define the scope of the power of the Executive and the Legislature in budget making.*

**Keywords:** *Legislative Power, Fiscal Budget, Financial Policies, Budget Amendment.*

### INTRODUCTION

The political nature, and of course, the structure of a society, has a lot to do in determining the type of governance that best suits that society. The historical perspective to the creation of a State also gives guidance as to the political hegemony of the society in question at any given point in time. Governance is a phenomenon that involves political control or powers exercisable by a free or sovereign state or a state under colonial rule by a set of people duly recognised as possessing the authority to rule over the concerned territory. In other words, political power may be associated with claims of authority and autonomy – which traditionally implies the idea of sovereignty, and a formal political arrangement defining the general framework based on such political understanding. The content of political power and structure is provided for by a formal organisation which bestows upon a formally recognised institution the authority being exercised by it.<sup>1</sup> Furthermore, political power is derived from law, and it is through its framing that power is condensed and generalised and claim of authority is justified.<sup>2</sup>

It is the responsibility of modern government to appropriate, allocate and utilise state resources for the betterment of everyone within it.<sup>3</sup> The essence of government is to manage and harness the resources of the state to promote good living condition of the citizens and advance the economic base of the society.<sup>4</sup> This is more in place with the utilitarian legal philosophy which

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1. Poul F Kjaer, 'From the Private to the Public to the Private? Historicizing the Evolution of Public and Private Authority' (2018) 25(1) *Indiana Journal of Global Legal Studies* 19.  
 2. *ibid.*  
 3. See the Nigerian Constitution 1999, s 16 dealing with the economic objectives of the Government.  
 4. *ibid.*



claims that law, and by extension government, should be seen to promote the greatest happiness of the greatest number of people.<sup>5</sup> There is a legal presumption that the government has the responsibility to run the state effectively and utilise the machinery of the state to bring about good living condition and better life to the citizens, and to drive the economic policy of the state.<sup>6</sup> Nigeria is a federation consisting of a centre government and constituent states with distinct governments from the centre government.<sup>7</sup> The 1999 Constitution of the Federal Republic of Nigeria provides for a presidential system of government which enables division of governmental powers between the Legislature, the Executive and the Judiciary. Specifically, section 4 of the Constitution provides that the legislative powers of the federation shall be exercised by the National Assembly, which shall comprise of the Senate and the House of Representatives.<sup>8</sup> Part of the functions of a government is to design the right policies for sustainability of the state politically, economically and socially. A well thought-out financial plan plays a major role in the development and good living conditions of the citizens in a state in any period of time.

Budgeting is an essential function of government for the purpose of designing financial plans of the country for any given period of time, usually a year. Budget can therefore be defined as a document which contains estimates of revenues and expenditures of a country for a definite period of time.<sup>9</sup> It is 'an estimate of resources expected for an entity both in value and source and how the resources will be spent for an identified period of time'.<sup>10</sup> A good budget serves as a mechanism for resource allocation among different needs and priorities and for the realisation of economic stability and development of the country. Budget is a reflection of annual allocation of financial resources to pursue the needs and goals of the government and it mirrors the underlying budgetary policies and priorities of the government in that fiscal year. Hence, a budget process is the method of identifying the needed resources and their use for the attainment of the economic, financial, political and social goals of the country.<sup>11</sup> The process has different strata of involvement starting with the Ministry of Finance, which is the coordinating Ministry, other implementing Ministries, the Executive and the Legislature.<sup>12</sup> It is pertinent to note that countries have different budgetary terms: whereas majority of countries adopt annual budgetary approval method, some like Slovenia and some states in the United States adopt biennial budgets, while Uruguay adopts a five-year budget at the beginning of each term of a government.<sup>13</sup> Budgetary steps include the drafting of the line items of the budget which ordinarily take into cognisance the review of the macro-economic framework and budgetary guideline issued to spending agencies. These agencies are required to prepare their budgets based on their strategic plans and in line with the guideline. It is purely a strategic economic order for the spending agencies or Ministries to negotiate for adequate allocation of

5. See Dennis Lloyd, *The Idea of Law* (Penguin Books 1987) 98-99.

6. See the 1999 Constitution of the Federal Republic of Nigeria (FRN), s 16.

7. *ibid* s 2(2).

8. *ibid* s 4(1).

9. GE Edame, and MO Ejue, 'Budgeting Role, Infrastructural Development and Economic Growth in Nigeria' (2013) 2(6) *European Journal of Business and Social Sciences* 2.

10. *ibid*.

11. 'The Budget Process in Africa: Comparative Study of Seven Countries' A publication of the Parliamentary Centre (Africa Programme) 11. (*Agora Parliament*, 2010) <[https://agora-parl.org/sites/default/files/the\\_budget\\_process\\_in\\_africa\\_2010\\_en.pdf](https://agora-parl.org/sites/default/files/the_budget_process_in_africa_2010_en.pdf)> accessed 27 February 2018.

12. *ibid*.

13. Ian Lienert, 'The Role of Legislature in Budget Processes' (International Monetary Fund Technical Notes and Manual, April 2010) <<https://blog-pfm.imf.org/files/fad-technical-manual-9.pdf>> accessed 27 February 2018.



funds to justify the reason for their demands in the annual budget due to limited resources that are available for sharing.<sup>14</sup> The Executive is responsible for prioritising allocation of resources amongst the agencies and Ministries based on its policy demands.<sup>15</sup> This is now reflected in a draft budget that will be prepared by the Ministry of Finance and submitted for legislative approval.<sup>16</sup>

The paper aims at examining the legal responsibility of making budgets in Nigeria and the roles to be played by the Legislature in designing and passing budget into law. There have been perennial disputes between the legislative and executive arms of Government in Nigeria as regard the scope of the powers that can be exercised by each arm on the passage of Appropriation Bills into law. These tussles are hinged upon the apparent power of the legislature to effect changes in budget lines and estimates in Appropriation Bills submitted by the executive arm to it for passage into law. The executive often predicates its argument on the actual responsibility given to the executive arm by the Constitution to prepare the budget for each fiscal year to be laid before the National Assembly. Hence, this paper intends to examine the scope of the power of the legislature as regard fiscal budgeting in Nigeria.

### THE LEGAL FRAMEWORK FOR BUDGET MAKING IN NIGERIA

The Executive is the second recognised arm of government under the presidential system of government practised in Nigeria under the 1999 Nigerian Constitution. The power of the Executive is contained in section 5 of the Constitution and the executive power of the Federation is to be exercised by the President of the Nation, which power may be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation. The Executive is granted constitutional power to prepare annual budget, otherwise known as Appropriation Bill, which is transmitted to the National Assembly for passage into law.<sup>17</sup> By the provision of section 13 of the Financial (Control and Management) Act<sup>18</sup> the Minister charged with the responsibility for matters relating to finance shall cause to be prepared in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year, which shall be presented to the president for approval. Budget is prepared by the Budget Office of the Federation which is a department in the Ministry of Finance. This body is bestowed with the responsibility of preparing annual budget by providing technical supports needed in its preparation. Its functions involve developing medium term revenue framework;<sup>19</sup> medium term expenditure;<sup>20</sup> obtaining overhead budget estimates from different Ministries, Departments and Agencies (MDAs) by issuance and service of Budget Calls Circulars on them; and evaluation and collation of budget estimates submitted by the MDAs and preparation of a draft budget for onward transmission to the President.<sup>21</sup> The draft budget, known as Appropriation Bill,<sup>22</sup> is then

14. The Budget Process in Africa (n 11) 11.

15. *ibid.*

16. *ibid.*

17. See the 1999 Constitution of the FRN, s 81.

18. Cap F26 Laws of the Federation of Nigeria, 2004.

19. This is estimated incomes or projected revenues that will accrue to the nation from different sources within a spate of time.

20. This is the maximum amount that can be spent and be allocated to different expenditure heads.

21. AbdulRasheed Alada Muhammed and Ruth Fanny Kinge 'Executive-Legislature Relations in the Budget Process: A Study of President Obasanjo years, 1999-2007' (2015) 3(2) Covenant University Journal of Politics and International Affairs 55.

22. Note that section 13(2) of the Finance (Control and Management) Act provides that 'The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund of the Federation by the Constitution) shall be included in a bill to be known as an Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein'.



laid before the National Assembly by the President for passage into law- which is the approval stage.

The President is to lay before each House of the National Assembly the prepared Appropriation Bill, which contains estimates of revenues and expenditures of the Federation for the next fiscal year.<sup>23</sup> The Bill is expected to pass through normal legislative process for passage into law. However, by section 59 of the Constitution where the Bill is passed by one of the Houses of the National Assembly but is not passed by the other House within a period of two months from the commencement of a financial year, the President of the Senate shall within 14 days thereafter convene a meeting of the joint finance committee of the two Houses to examine the Bill in order to resolve the differences between the two Houses.<sup>24</sup> Where the differences could not be resolved by the joint finance committee, the Bill shall be presented before a joint meeting of the National Assembly and if passed at the meeting the Bill shall be presented to the President for assent.<sup>25</sup> Where the President within 30 days of presenting the Bill to him fails to signify his assent or where he withholds his assent, the Bill shall be presented to the National Assembly sitting at a joint meeting and if passed by two-third majority of members of both Houses at such joint meeting, the Bill shall become law and the assent of the President will no longer be required.<sup>26</sup>

Section 81 of the 1999 Constitution provides for additional budgetary bills to be laid before the National Assembly in case there is need for further expenditure by the Government which is not captured in the annual fiscal appropriations earlier passed into law. The section provides thus:

If it is found in respect of any financial year that the

- (a) amount appropriated by the Appropriation Act for any purpose is insufficient; or
- (b) a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act, a supplementary estimate showing sums required shall be laid before each House of the National Assembly and the heads of any such expenditure shall be included in a bill known as Supplementary Appropriation Bill.<sup>27</sup>

The law also makes provision for situations where in the beginning of any financial year a budget has not been passed into law. The provision is to prevent the Government from being shut down due to lack of fund. It is provided in section 82 of the Constitution that if in respect of any financial year the Appropriation Bill has not been passed into law-

the President may authorise the withdrawal of moneys in the Consolidated Revenue Fund of the Federation for the purpose of meeting expenditure necessary to carry on the services of the Government of the Federation for a period not exceeding six months or until the coming into operation of the Appropriate Act, whichever is the earlier:

23. See the 1999 Constitution of the FRN, s 81.

24. *ibid* s 59(2).

25. *ibid* s 59(3).

26. *ibid* s 59(4).

27. See the 1999 Constitution of the FRN, s 81(4). Similar provision is contained in the Finance (Control and Management) Act, s 14.



Provided that the withdrawal in respect of any such period shall not exceed the amount authorised to be withdrawn from the Consolidated Revenue Fund of the Federation under the provisions of the Appropriation Act passed by the National Assembly for the corresponding period in the immediately preceding financial year, being an amount proportionate to the total amount so authorised for the immediately preceding financial year.<sup>28</sup>

In Nigeria, the Constitution is the fundamental document conferring power to make annual budget on the government. The powers of the relevant arms of the government are contained in the Constitution.<sup>29</sup> Aside this fundamental law, are other laws dealing with the financial management of the nation. Such laws in Nigeria include but not limited to Public Procurement laws,<sup>30</sup> the Financial Year Act 1980,<sup>31</sup> the Fiscal Responsibility Act (no 31) 2007<sup>32</sup> and the Financial (Control and Management) Act.<sup>33</sup> Particularly, the Fiscal Responsibility Act (FRA) 2007 helps in financial management and decisions of the Executive.<sup>34</sup> The Act established the Fiscal Responsibility Commission, which is a body corporate with perpetual succession and a common seal, for the purpose of performing the functions prescribed for it under the Act geared towards promoting the economic objectives contained in section 16 of the 1999 Constitution.<sup>35</sup> It provides that the Medium Term Expenditure Framework (MTEF) shall be the basis for the preparation of the yearly budget. The Act provides that the Medium Term Expenditure Framework for a period for the next three financial years shall be caused to be prepared by the Federal Government, after consultation with State governments, and laid before the National Assembly for their consideration not later than six months before the commencement of the Act.<sup>36</sup> Subsequently, such Medium Term Expenditure Framework for the next three financial years shall be caused to be prepared and laid before the National Assembly for consideration not later than four months before the commencement of next financial year.<sup>37</sup> The Framework shall be considered for approval by each House of the National Assembly, and where necessary, such modifications may be made to the Framework by the National Assembly.<sup>38</sup>

It should be noted that the Framework is required to be considered and endorsed by the Federal Executive Council before onward transmission to the National Assembly which takes effect upon the resolution of each House of the Assembly.<sup>39</sup> The medium term expenditure framework is expected to contain a macro-economic framework setting out the economic projections of the government for the next three years and stating the underlying assumptions for those projections and an analysis of the economic projections of the preceding three years.<sup>40</sup> The Framework must also contain a fiscal strategy paper setting out the Federal Government's medium term financial objectives; the Federal Government's policy on 'taxation, recurrent

28. 1999 Constitution of the FRN, s 82.

29. *ibid* ss 81 and 82.

30. For instance, there is the Lagos State Public Procurement Law 2011 and also the Public Procurement Act 2007 Cap P41 Laws of the Federation of Nigeria, 2004.

31. Cap F27 Laws of the Federation of Nigeria, 2004.

32. Cap F40 Laws of the Federation of Nigeria, 2004.

33. Cap F26 Laws of the Federation of Nigeria, 2004.

34. See the preamble to the Fiscal Responsibility Act.

35. See the Fiscal Responsibility Act 2007, s 3.

36. Fiscal Responsibility Act, s 11(1).

37. *ibid* s 11(1)(b).

38. *ibid* s 11(2).

39. *ibid* s 14.

40. *ibid* s 11(3)(a).



expenditure (non-debt), debt expenditure, capital expenditure, borrowings and other liabilities, lending and investment'.<sup>41</sup> The Medium Term Framework is also contained in the strategic economic, social and developmental priorities of the Federal Government for the next three financial years. The Framework shall also contain the aggregate expenditure projections and estimated revenue framework and aggregate tax expenditure projection of the Federal Government for each financial year for the next three financial years.<sup>42</sup> By and large, the medium term expenditure frameworks provides the overall fiscal goals for setting the aggregate expenditure levels and binding limits for formulating annual budget.<sup>43</sup>

According to section 18 of the FRA, Annual Budget is to be derived from Medium Term Expenditure Framework. It provides as follows:

Notwithstanding anything to the contrary contained in this Act or any other law, the Medium term Expenditure Framework shall:

- 1) Be the basis for the preparation of the estimates of revenue and expenditure required to be prepared and laid before the National Assembly under section 81 (1) of the Constitution.
- 2) The sectoral and compositional distribution of the estimates of the expenditure referred to in subsection (1) of this section shall be consistent with the medium term developmental priorities set out in the Medium Term Expenditure Framework.

Annual budget is expected to be passed into law before the commencement of each financial year. According to the Financial Year Act, 'financial year' shall pursuant to section 318(1) of the 1999 Constitution be the period of twelve months commencing on 1 January and ending on 31 December.<sup>44</sup> But it is informative to say that from recent experiences financial year undulate due to delayed passage of budgets. The main idea behind the enactment of Fiscal Responsibility Act is to encourage early presentation and approval of budget. The trend in the passage of annual budget in Nigeria shows that passage of annual budget often suffers a setback due sometimes to late presentation to the National Assembly; late approval by the National Assembly; or delay in giving assent to it by the President.

### CONFLICT OF BUDGETARY POWERS BETWEEN THE LEGISLATURE AND THE EXECUTIVE

There has been a long standing controversy as regard the legality of the involvement of the Legislature in adding to budget estimates presented to it by the Executive arm of government for passage into law in any fiscal year.<sup>45</sup> The raging controversy is not restricted to Nigeria but

41. *ibid* s 11(3)(b).

42. *ibid* s 11(3)(c).

43. Paul Posner and Chung-Keun Park, 'Role of Legislature in the Budget Process: Recent Trends and Innovations' (2007) 7(3) *OECD Journal on Budgeting* 8. ISSN 1608-7143.

44. 1999 Constitution, s 318 defined 'financial year' to mean 'any period of twelve months beginning on the first day of January in any year or such other date as the National Assembly may prescribe'. This shows that in the absence of any provision to the contrary in the Constitution the National Assembly has the power to determine when a financial year is to commence. The National Assembly is wont to exercise this power whenever there is delay in passage of budget.

45. See AO Ekp, and PI Iweoha, 'Powers of Executive and Legislature in Budget Making Process in Nigeria: An Overview' (2017) 57 *Journal of Law, Policy and Globalization* 44 – 54. See also Muhammed (n 21) 52 – 67.



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45. See AO Ekpu, and PI Iweoha, 'Powers of Executive and Legislature in Budget Making Process in Nigeria: An Overview' (2017) 57 *Journal of Law, Policy and Globalization* 44 – 54. See also Muhammed (n 21) 52 – 67.



many countries in the world are also going through similar experience.<sup>46</sup> It is appropriate to understand the legal philosophy behind budget making and its implementation in any political milieu. One should know that there is no uniform practice as regard budget making in all countries. Therefore, the budgetary roles and practices of the Executive and the Legislature vary from country to country. The idea of government itself stems from the idea of submitting powers that can be individually exercised to some duly elected representatives who exercise such powers on behalf of the people of a society. That is the fulcrum upon which the idea of democracy revolves. The whole idea is to avoid a state of anarchy or prevent what is often regarded as 'a state of nature' where everyone aims for survival and the strong and mighty ones eke out life for themselves at the detriment of the weak ones.

Since the re-emergence of the democratic rule in Nigeria in 1999 after a long military rule in the country, there have been perennial problems regarding budget making due to lack of understanding of roles between the Executive and the Legislature in budget formulation and implementation. The resultant effects of this impasse often lead to delay in the passage of budgetary or appropriation bills into law and slow pace of government activities.<sup>47</sup> It should be quickly mentioned here that Nigeria operates constitutional supremacy and there is a clear separation of powers between the Legislature, the Executive and the Judiciary, unlike parliamentary supremacy operated in some countries. By virtue of the presidential constitution operating in Nigeria, the constitution which is the grand document gives validity to the actions of state actors and also nullifies actions which are contrary to its provisions.<sup>48</sup> The Constitution generally specifies the roles, powers and functions of the Executive, the Legislature and the Judiciary, which are the three arms of government.<sup>49</sup> Nigeria therefore recognises the supremacy of the constitution over any other state organ.<sup>50</sup> The Constitution gives the Executive the power to prepare the annual budget of governmental expenditure for any fiscal year. Specifically, section 81 of the 1999 Constitution provides:

The President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenue and expenditure of the Federation for the next following financial year.<sup>51</sup>

Furthermore, section 81 provides that the heads of expenditures contained in the estimates shall be included in a bill known as Appropriation Bill, and withdrawal of such money to finance the budget shall be from the Consolidated Revenue Fund of the Federation.<sup>52</sup> The Constitution provides, 'No money shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by an Act of the National Assembly'.<sup>53</sup> To this extent, it shows that the Executive cannot withdraw money from the public fund except by prior direction given by the National Assembly.

46. See Posner (n 43) 1-26 which considers similar experiences among the OECD States. See also the work of Pamela Gomez, Joel Friedman and Isaac Shapiro, 'Opening Budget to Public Understanding and Debate' (2005) 5(1) OECD Journal on Budgeting 7-36. ISSN 1608-7143.

47. Muhammed (n 21) 54.

48. See the 1999 Constitution of the FRN, s 1.

49. *ibid* ss 4, 5 and 6 which respectively deal with powers of the Legislature, Executive and the Judiciary.

50. *ibid* s 1(1).

51. *ibid* s 81(1).

52. The Consolidated Revenue Fund is the treasury in which all moneys raised or received by the Federation shall be paid into. See the 1999 Constitution, s 80(1).

53. 1999 Constitution of the FRN, s 80(4).



A close examination of the above provisions shows that it is the responsibility of the Executive in the person of the President of the Federation to prepare the budget of any financial year which is to be laid before each House of the National Assembly for approval. Also, no money can be withdrawn or spent from any public fund of the Federation except in a manner prescribed by the National Assembly. It therefore implies that the National Assembly has that power to authorise spending by the government. The question to be asked here is whether the National Assembly, by the powers conferred to carry out legislative functions which require subjecting any proposal for resolution to debate and scrutiny, can alter the contents of an Appropriation Bill submitted to it by the Executive. The right or power to alter an Appropriation Bill by the legislature is predicated on its ability to increase the allocated revenues or expenditures or the budget estimates or to reduce same. The extent to which the parliament can do this depends on the operative law within the jurisdiction or regular or traditional practice recognised within such jurisdiction.

### PASSAGE OF BUDGET IN NIGERIA: SETTING THE STANDARD FOR LEGISLATIVE PARTICIPATION

It should be stressed in the beginning that the level of participation or intervention or constraint put on Legislature in budget lines alterations in terms of yearly expenditures submitted to it by the Executive for approval varies from country to country. This is also predicated on consideration of certain political factors in the country. However, the involvement of the Legislature may be required in terms of understanding and debating some fiscal policies intentions of the government and the need to encourage good governance and transparency on the part of the government.<sup>54</sup>

The standard practice in any democratic set-up is for the parliament to have pre-budget review, which will consider estimate revenue generation by the government and its spending plan.<sup>55</sup> It is advisable that budget proposal for any fiscal year should be brought before the parliament for review at least few months before the commencement of that fiscal year. This will allow the parliament ample time to scrutinize and debate the budget and fix loose ends before the budget is ready for execution. In the past few years, despite the fact that budgets were laid before the National Assembly even up to five months before the commencement of any fiscal year the budgets still suffered delay in the Assembly with the result that the economy, infrastructural development and welfare of the citizens were adversely affected.<sup>56</sup> There has been evidence of poor implementation of budgets in Nigeria as a result of delay in their passage which have the effect of the budget of a year still running in a supposed new fiscal year. Delay in passage of fiscal budget sometimes lapsed into commencement of a new fiscal year. The situation of non-passage of budget before the commencement of a fiscal year does not make the Executive arm totally helpless as the Constitution provides that the President may authorise withdrawal of money from the Consolidated Revenue Fund of the Federation 'for the purpose of meeting expenditure necessary to carry on the services of the Government of the Federation for a period not exceeding six months or until coming into operation of the Appropriation Act, whichever is the earlier'.<sup>57</sup> Such withdrawal from the Consolidated Revenue Fund for such period shall not exceed the amount appropriated for a corresponding period by the National Assembly in the Appropriation Act immediately preceding that financial year.<sup>58</sup> This approach has debilitating

54. Lienert (n 13)

55. *ibid.*

56. It was shown that in the past six years the average percentage expenditure of overall national budget implementation was 22 per cent due to delayed passage by the Nigerian parliament. See Editorial, 'Delay in the passage of 2018 budget' *The Sun* (24 April 2018) <<https://www.sunnewsonline.com/delay-in-the-passage-of-2018-budget/>> accessed 30 April 2018.

57. 1999 Constitution of the FRN, s 82.

58. *ibid.*



effect on proposing and effective take-off of new policies by the Executive to better the lot of the country which might be captured in the budget proposal already submitted and still awaiting approval by the Parliament.

The moral question that one may consider appropriate is the extent of power, if any, that the parliament has in adjusting budget presented to it for approval by the Executive President. Should the parliament be a mere rubber stamp to approve the budget presented to it by the Executive without even considering the policy discretions of the Executive which may have a long-term effect on the country's economy? It is traditional before budget approval in the National Assembly for ministries, departments and agencies (MDAs) to come forward before the finance committees of the National Assembly to defend their proposal for budget spending for the fiscal year covered by that budget. It is imperative for the Legislature to consider the economic projection presented through the budget; the proposed revenue or financial target to fund the budget and the practicability of execution of the budget before it is given a pass by the parliament. The parliament also considers the amount earmarked for capital expenditures to foster human and infrastructural development; and the recurrent expenditures captured in the budget; and the country's debt profile to create a necessary economic balance in the fiscal year under consideration. It must be emphasised that the extent of involvement of the Executive and the parliament in budget making in any country is predicated on many factors, which include historical, constitutional, political, 'the legal and procedural aspect of the budget process itself and the legislative organisation structures and processes'.<sup>59</sup>

There are two contradicting opinions about the involvement of Legislature in budget making at the preparation stage. Whereas some believe that the Legislature's involvement in the making of annual budget is highly necessary, on the far end of the spectrum are those who believe that the involvement of the Legislature will greatly hamper the Executive in fulfilling its promises to the citizens. This latter school of thought believes that involvement of the Legislature in budget lines development may result in the Legislature increasing the expenditure of the government without corresponding source of income.<sup>60</sup> Depending on the tradition of the country concerned the Legislature may or may not adjust the structure and format of annual appropriations submitted for approval. For instance, the United States' Congress which represents the extreme case is inclined to changing the format of annual appropriation yearly to add specific items via 'earmarked' spending; whereas the British Parliament cannot change the format of the annual estimates of spending, which is within the prerogative of the Executive based on a long-standing tradition.<sup>61</sup> The British approach is typical of most countries with parliamentary system of government in which the Executive has the power to propose the format subject to parliamentary approval or rejection.

It is undisputable that countries run different systems of government and certain measure of powers are arrogated to the legislative arm for the purposes of budgetary allocations and approval, which results out of conferment by law or through constant practices that have become normative. The level of participation of legislature in country's yearly fiscal budget has variegated approaches in African countries. In Ghana for instance, section 108 of Ghanaian Constitution provides that the Parliament shall not impose a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge

59. The Budget Process in Africa: (n 11).5.

60. *ibid.*

61. Lienert (n 13) 8-9.



otherwise than by reduction unless the bill is introduced or the motion is introduced by, or on behalf of, the President.<sup>62</sup> It is obvious from the constitutions of some countries that the legislative powers on budget making are prescribed by their various constitutions. However, in countries without written constitutions, like the United Kingdom, the traditions dictate the prerogatives of the parliament in budget making.<sup>63</sup> It cannot be disputed that both the Executive and the Legislature play major roles in national fiscal budgeting and the level of participation of each arm is given by the constitution, where applicable. Most constitutions provide that no money may be spent by the Executive arm from the national purse except with the prior approval of the Legislature.<sup>64</sup> Be that as it may, the constitution may be clear on the roles and powers of each arm on budget making for the country. Where there is no ambiguity as to the provisions of the constitution in this respect there will be no likelihood of conflicting roles and powers of these arms. In the absence of clear provision of the constitution the arm with stronger political influence will have a field day to exert its influence on the budgetary contents.

By and large, it is a known tradition that it is the role of the Executive to prepare budget which is to be submitted to the parliament for approval. The constitution may be restrictive in the extent of the role of the parliament as regard changing budget items submitted to it. In some cases, the constitution may allow broad role on the part of the parliament to adjust budget items or, line budget. For instance, the Malawian constitution grants greater power to the Executive in budget making by prohibiting the Legislature from considering any bill or amendment for the imposition of any charge upon the Consolidated Fund, or any alteration of such charge unless recommended by the government.<sup>65</sup> The parliament under the Namibian constitution enjoys the powers to increase or reduce the budget submitted to it by the Executive, and it may also add new budget lines or areas of spending to the budget.<sup>66</sup> In the case of Ghana, the constitution prohibits bills and amendments, except as offered by the government, that would create imposition of any charge on the consolidated fund of Ghana of the alteration of any such charge otherwise by reduction. This constitutional provision empowers the parliament to make reductions on the budget offered by the government, but it is prohibited from making additions to it by way of amendment.

The global practice is to ensure adequate information and maintain a level of transparency in government financial activities which is reflective of the budgetary allocation to implement projects that are necessary for the development of society. Interventions have come through the involvement of multilateral organisations and civil society organisations by way of ensuring government is transparent in its budget and defining the procedures and practices necessary to achieve this.<sup>67</sup> It has been observed that the current trend is not to consider national budget as strictly the prerogative of the Executive arm of government. The Organisation of Economic Cooperation and Development (OECD) and the International Monetary Fund (IMF) have both at different times adopted codes of practice to propagate transparency at every stage of national budget making.<sup>68</sup> Of utmost concern also is the interest of the citizens in the policies espoused

62. Ghana's Constitution of 1992 (with Amendments through 1996), s 108(a)(ii).

63. The National Democratic Institute of International Affairs, 'Legislatures and Budget Process: An International Survey' (Legislative Research Series 2003) 8  
<[https://www.ndi.org/sites/default/files/1651\\_gov\\_budget\\_093103.pdf](https://www.ndi.org/sites/default/files/1651_gov_budget_093103.pdf)> accessed 11 March 2018.

64. Lienert (n 13).

65. 1995 Constitution of Malawi, s 57.

66. See the Constitution of the Republic of Namibia 1990, art 75(4A).

67. Gomez (n 46) 8.

68. See the International Monetary Fund, *Code of Good Practices on Fiscal Transparency 1998* <<https://www.imf.org/external/pubs/ft/history/2012/pdf/4d.pdf>> accessed 22 June 2018 and the OECD, *Best Practices for Budget Transparency 2002* <<https://www.oecd.org/gov/budgeting/Best%20Practices%20Budget%20Transparency%20-%20complete%20with%20cover%20page.pdf>> accessed 22 June 2018.



through financial budget presented by government to the Legislature. It is presumed that the citizens should have a say in the way they are governed by having access to adequate and timely information on budget, even during the time the budget is being debated on the floor of the parliament. This will enable scrutiny of the budget to ensure that there are no loopholes for corruption and to serve the best interest of society. Therefore, it requires that steps should be taken to encourage public involvement and active legislative participation in budget making.

It is apt to conclude that legislative involvement in budget making will provide that needed external influence to encourage transparency and accountability on the part of the government (Executive). Expanding the traditional legislative involvement in budget making no doubt will lead to financial discipline on the part of the Executive and also promote the legislative role in revenue and spending policies.<sup>69</sup> It may be an impropriety for anyone to go outside the clear provisions of the Constitution to act beyond or contrary to such provisions. From Nigerian perspective, there is no express constitutional provision that allows the National Assembly to add or reduce the budget estimates introduced by the Executive. In the absence of this provision it is characteristic of the National Assembly to make copious additions and reductions in budget estimates or even add new lines of budgetary allocation to the budgets submitted by the Executive in recent times. Ordinarily, one may assume that what is expected of the National Assembly is to accept or reject the budget as presented by the Executive. But the question is to what extent would this practice appeal to good reasoning and timely approval, passage and implementation of the budget if the Legislature continues to reject budget presented by the Executive if it does not comply with good policy and esteemed priorities rather than making inputs they feel will fulfil their legitimate expectation? In other words, should the Legislature return the budget to the Executive if the indices put into consideration by the Executive in arriving at the budget are wrong or are on faulty foundation or where the financial or economic policy reflection is weak or unworkable? It can be argued that the duty to prepare budget is strictly within the domain of the Executive and any change to the budget should be done through the Executive. This is in line with the doctrine of separation of powers and the Constitution prescribes the scope and extent of powers exercisable by each arm of government. Irrespective of the fact that the Constitution provides for separation of powers between the Executive, the Legislature and the Judiciary the principle of checks and balances operates in the exercise of such powers. Under the legislative function particularly in the passage of bills the Legislature is not expected to pass any bill presented on the floor of the House hook, line and sinker without debating the bill, reviewing it and making amendment to such bill where necessary. Also, since the Legislature is given the power under the Constitution to approve any expenditure by the government it should reasonably be expected to make contributions to any money bill presented to it. According to a writer 'budget is a plan for borrowing, saving and spending. It is a mere guess work of expenditure. The actual income or expenditure may fall short of what is expected while the expenditure may outstrip the expected revenue'.<sup>70</sup> To this extent one may infer that budget proposal is a mere conjecture of expected incomes and expenditures of the government for a given fiscal year, and may be open to amendment due to the vicissitude of estimated spending and projected income vis-à-vis the economic reality.

69. Allen Schick, 'Can National Legislatures Regain an Effective Voice in Budget Policy?' (2002) 1(3) OECD Journal on Budgeting.

70. Muhammad A Mainoma, 'Can the Legislature alter the provision of the budget as presented by the Executive?' *The Guardian* (20 June 2017) <<https://guardian.ng/issue/can-the-Legislature-alter-the-provision-of-the-budget-as-presented-by-the-Executive/>> accessed 21 March 2018.



It is unquestionable that the Legislature has ultimate powers to the treasury of the country and it gives approval to any money to be withdrawn and to be spent from the nation's treasury.<sup>71</sup> To this extent, the much power wielded by the law makers puts them in a position to also ruminate on policy priorities to be promoted in any budget submitted for their approval. It has been rightly opined that the role of the Legislature should not be restricted to mere rubber-stamping of budget proposal submitted for approval by the Executive but the Legislature should be seen as 'locus of overall political and financial accountability'.<sup>72</sup> Some extra-legal factors may influence the decision of the Legislature whether to approve budget estimates without alterations, or increase or reduce the budget estimates, or add line items to the budget. Schiavo-Campo alluded to the phenomenon of *logrolling* during budget approval by the Legislature which involves a situation where the legislators are driven by pressure from their constituencies in giving preferences to the manner in which resources are allocated which can lead to a tendency to increase expenditure during budget debate.<sup>73</sup> He posited that there are three methods for Legislature to amend budget one of which may be adopted in different jurisdictions. These are as follows:

1. Unrestricted power: this gives the Legislature power for upward or downward review of budget without the consent of the Executive.
2. Restricted power: this is the power to amend the budget but within restricted limits, particularly as to the maximum increase in expenditures or decrease in revenue. Such powers, in some jurisdictions, may not allow the Legislature to increase the budget at all.
3. Balance power: this allows the Legislature to increase or decrease expenditure or revenue provided there are counterbalancing measures to maintain the budget balance.<sup>74</sup> In this case the Legislature is allowed by the legal framework applicable to exceed the total limit of the estimated budget provided there is counterbalancing by bringing forth equivalent revenue increase to cover for the difference.

Wehner categorised the powers of Legislature over Executive budget into: (1) *Budget-making Legislatures* – the Legislature has capacity to amend or reject budget proposal submitted to it by the Executive and substitute one of their own (examples of states that practice this is United States of America and Sweden); (2) *Budget influencing Legislatures*– here Legislature has the power to amend or reject Executive budget but does not have the capacity to substitute it with their own budget. Some Legislatures do not have power to add to Executive budget, though they may cut the budget; whereas some Legislatures may add as long as they find offsetting cuts; (3) *Legislatures with little or no budget role* – under this the Legislatures lack capacity to reject or amend Executive budget in any substantive way, either by adding or making reductions in the budget. This is largely based on the fact that such may make the government unpopular and therefore lead to its imminent exit. This is particularly the case with the Westminster styled legislature as in the United Kingdom.<sup>75</sup>

71. See the 1999 Constitution of the FRN, s 80.

72. Salvatore Schiavo-Campo, 'Budget Preparation and Approval' in Anwar Shah (ed), *Budgeting and Budgetary Institution* (The International Bank for Reconstruction and Development, World Bank 2007) 270.

73. *ibid* 272.

74. *ibid* 273.

75. See Joachim Wehner, 'Back from the Sidelines? Redefining the Contribution of the Legislature to the Budget Cycle' (World Bank Institute, Washington DC 2004).



Experience has shown that the National Assembly of Nigeria has often time amended annual budget submitted to it by the Executive before its final passage. The legal justification of this action is largely uncertain, but it has become a recurrent exercise of legislative power of the National Assembly. It is the belief in certain quarters that the responsibility of the National Assembly is just to approve or reject the budget as submitted to it by the Executive and not introduce any extraneous budget line or increase or reduce budget estimates allocated by the Executive. The determinant of budgetary planning and allocations is highly predicated on the needs and policy directives of the government. Such policies often have long term implementations that drive annual budgets prepared by the government which must take into cognisance the policy priorities of the State. This idea reflects medium term expenditure plans or framework of the government to promote its policies for a certain period of time during which results are achievable. Hence, annuals budgets are tailored to mirror the entrenched policies of the government and therefore reducing discretionary allocations in annual fiscal budgets.

In order to promote the medium-term fiscal policies and long term macro-economic stability of Nigeria, among other things, the Fiscal Responsibility Act (FRA)<sup>76</sup> was enacted in the year 2007. The Act has as its long title as follows:

- 1. An Act to provide for prudent management of the Nation's Resources, ensure
- 2. Long Term Macro-economic stability of the National Economy, secure greater
- 3. accountability and transparency in fiscal operation within the medium term fiscal
- 4. policy framework, and the establishment of the Fiscal Responsibility
- 5. Commission to ensure the promotion and enforcement of the Nation's economic
- 6. objectives, and for related matters.

The Act specifically empowered the Fiscal Responsibility Commission for the purpose of upholding the provisions of the Act to ensure, among other things, the promotion of the economic objectives contained in section 16 of the Nigerian Constitution 1999.<sup>77</sup> The provision of section 18(1) of the Fiscal Responsibility Act is to the effect that annual budgets are to be derived from Medium Term Expenditure Framework which shall be the basis for the preparation of the estimates of revenue and expenditure required to be prepared and laid before the National Assembly as provided for under section 81 of the Constitution. Moreover, it is provided under the Act that the sectoral and compositional distribution of the estimate of expenditure referred to in section 18(1) of the FRA 2007 shall be consistent with the medium term development priorities set out in the Medium Term Expenditure Framework.<sup>78</sup>

By the provisions of the FRA observed above, it is fashionable to say that in a bid to implement the constitutional principle of checks and balances among the three arms of the Government, it is within the powers of the National Assembly to ensure that annual budget submitted by the Executive to the National Assembly for passage into law is in conformity with extant laws, particularly the Constitution and the FRA, which are the primary documents considered for fiscal enumerative national budget. It is informative that by virtue of section 5(1)(b) of the Constitution Executive powers of the Federation shall extend to upholding the provisions of the Constitution and all laws made by the National Assembly on matters on which it has powers to make laws. Where it is realised by the National Assembly that the budgetary provisions

76. Cap F40 Laws of the Federation of Nigeria, 2004.

77. Fiscal Responsibility Act, s 3.

78. *ibid* s 18(2).



submitted by the Executive is not in line with the provisions of the law, particularly where it is contrary to the medium term expenditure framework as provided in the law the National Assembly has a duty to make necessary amendments to the Appropriation Bill to conform with the dictates of the law. A fiscal rule method of placing constraints on budgetary discretions, and legislative adoption of fiscal rules shows the concern of the elected representatives of fiscal discipline of the government.<sup>79</sup>

Though the Nigerian Constitution does not specifically provide that the Legislature can adjust budget items or add to them once submitted to it by the Executive, however, the inherent power of the Legislature to generally consider bills, whether originated in a legislative house or submitted to it for passage into law by the Executive, can also extend to amending the budgetary or appropriation bill as they deem fit. This process of considering bills, whether ordinary bills or appropriation bills, allows for robust arguments in consideration of the bills on the floor of the legislative house and helps shape the final document that will be generated. More so, the National Assembly has Finance Committees that can provide the platform to engage public debate on the annual budget and create the avenue to address policy issues that have bearing on the budgetary allocations in view of the medium term expenditure framework and policy directives provided. Past experiences have shown that the National Assembly is imbued with *unrestricted power* to amend fiscal budget submitted to it by the Executive. This is not to say that the Legislature has usurped the Executive power to prepare fiscal budgets but it merely performs its role as having the 'power of the purse' with authority to appropriate public funds. Therefore, the National Assembly has the ultimate control over public funds while the Executive is bestowed with the power to make financial initiatives.<sup>80</sup>

One cannot pretend not to be aware of the changing roles of the Legislature in budget making and its implementation. It is observed in most of the developing countries that Legislatures are playing more active roles in budget matters than they used to in the past for promotion of good governance and fiscal efficiency.<sup>81</sup> According to Lienert, 'When fiscal policies and medium-term budgetary objectives are debated in parliament, budget strategies and policies are "owned" more widely'.<sup>82</sup> It is part of the paraphernalia of the Legislature to have different house committees for different purposes. Finance committees are often set up, among other things, to review relevant portions of the Executive budget and recommend legislative actions- which reflect the growing roles of the Legislature in considering aggregate fiscal targets and policies.<sup>83</sup> The committee stage in budget making often create room for grassroots involvement due to public hearing and debate of the budget lines and estimates. Recently, the civil society organisations have shown so much concern for availability of budget information and ability to participate in budgetary decisions.<sup>84</sup> The idea is to promote global interest in ensuring transparency in government, curbing corruption and ensuring accountability in performance public services. It will allow the public 'to evaluate government policy intention, its priorities and their implementation'.<sup>85</sup> It is imperative that public and legislative involvement in budget making is necessary for inclusive governance which encourages the people to lend their voice

79. Lienert (n 13) 6.

80. Albert T Sam-Tsokwa and Christopher Ochanja Ngara, 'The National Assembly and the Budget Process in Nigeria's Fourth Republic: Tackling the Challenges of Timeliness' (2016) 12(5) Canadian Social Science 4. ISSN 1712-8056.

81. Lienert (n 13) 1.

82. *ibid.*

83. Posner (n 43) 12.

84. Gomez (n 46) 8.

85. *ibid.*



in the affairs of the nation. The Legislature has the power of the purse and it is the ultimate representative of the people in government and should therefore be given the widest power to scrutinise financial plans of the government, particularly in a nation where public hearing of budgetary bills is not encouraged. The public, ably represented by multilateral organisations or the civil society organisations, needs to be directly involved during hearing/debate of annual national budget particularly at committee stage to make necessary inputs and check the high handedness of the Legislature that may also want to use its broad powers on financial matters for the selfish motives of some of its members or the assembly as a whole.<sup>86</sup> The Legislature should not therefore be seen as a mere rubber stamp to financial or budgetary bills made by the Executive arm of government but its role should involve ability to debate the budget and make inputs where necessary.

In parliamentary system of government legislative involvement or power in budget making is relatively weak compared to the presidential system of government considering the fact that the members of the Executive are drafted from the parliament and the Legislature is politically required to grant support to the government as constituted by the Executive arm. Doing the contrary may spell doom and imminent end of the government. By the provisions of section 59 of the Nigerian Constitution, which deals with the procedure of passing money bills into law, the National Assembly is conferred with similar power as for ordinary bills to override the veto of the President where he refuses to assent the bills as passed by the National Assembly. This suggests that the National Assembly still has overriding power over financial affairs of the Nation. It means that the National Assembly can trump the exercise of veto power by the President where the President refuses to assent the money bill due to differences in the final bill from the one initially submitted by the Executive. If the issue of budget is in the exclusive preserves of the President there would not have been need for the provision of section 59 of the Constitution. This show of strength by the National Assembly further consolidates its power over the 'purse' of the nation. The high point of section 3 of the Fiscal Responsibility Act 2007 is that where the Executive through the President presents an Appropriation Bill in contravention of section 16 of the Nigerian Constitution the National Assembly may be pressurised through public hearing to include estimates that would make the Appropriation Bill comply with the said section 16 of the Constitution.<sup>87</sup>

## CONCLUSION AND SUGGESTIONS

Having considered the scope of the power of the Legislature to amend budgetary bills submitted by the Executive for passage into law, it is important to predicate the scope and limits of such power on the established legal framework in every nation. The spirit and letters of the law should be the most appropriate for consideration in making a foray into the exercise of legislative powers in budget making. In other words, the relationship between the Executive and the Legislature which are the two arms of government entrusted with the responsibility of budget making depends on the law applicable in each jurisdiction. The particular point for consideration in this paper is in relation to the power of the Legislature to vary budget estimates submitted to it for passage into law by the Executive. It has been discovered that in some countries the Legislatures have powers to vary budget estimates and determine policy priorities

86. There is of recent the concept of budget padding which involves the legislative members secretly introducing some budget items or inflating budgetary allocations to suit individual or sectional interest and which particularly has not been brought to the floor of the House for a debate.
87. Femi Aborishade, 'Does the National Assembly have power to alter the budgetary estimates prepared by the Executive?' (*Sahara Reporters*, 9 May 2016) <<http://saharareporters.com/2016/05/09/does-national-assembly-have-power-alter-budgetary-estimates-prepared-Executive-femi>> accessed 15 February 2018.



of the government for the purposes of the annual fiscal budget as long as the variation does not exceed the set limit of spending contained in the estimated budget. In some other countries the Legislatures are given such power to vary budget estimates but they must establish a counterbalance to generate additional revenue to plug the hole created by excess budget estimates. On the far end of the spectrum are countries, particularly running a parliamentary system of government, that do not allow the parliament through customary practice, to vary budget estimates submitted to them by the Executive.

The trend of events in the past few years of democracy in Nigeria has shown that the legislative arm of government has been performing active roles in budget making. It is not doubtful that the government and the civil society organisations have a lot of roles to play in developing public policies for a nation but the Executive and the Legislature are seen as active participants in shaping such policies. Policy priorities of the government often lead to incessant conflicts between the Executive and the Legislature which is habitually responsible for the delay in the passage of annual fiscal budgets, though the functions of the two arms of government in respect of budget making are complementary. This has sometimes forced the President to withhold his assent to appropriation bills already passed by the National Assembly in Nigeria where the Legislature's policy consideration is at variance with that of the Executive.<sup>88</sup> It is revealed in this paper that there is no clear-cut provision in the Constitution of Nigeria giving the Legislature power to amend budget estimates by way of addition, subtraction of readjustment or reallocation of budget estimates or even adding other budget lines to a draft budget submitted by the President for passage into law. It is however strongly assumed that since the Constitution has given the Legislature wide power to amend legislative bills before them before passage into law, Appropriation Bills should not be an exception. The Legislature is expected to have such power of amendment of money bills to suit the policy projections of the government which is part of the objectives of the Fiscal Responsibility Act 2007.

Moreover, the Legislature also has the oversight function to ensure adequate implementation of approved budget for any given fiscal year. Implementation of budget is an action stage that involves translating policy statements into concrete programmes of the government and the level of implementation would have effect either positively or negatively on the citizens.<sup>89</sup> In carrying out its oversight function section 85 of the Constitution provides that the public accounts of the Federation and all offices and courts of the Federation shall be audited and reported by the Auditor – General of the Federation who shall submit his reports to the National Assembly which are expected to be reviewed by the relevant committees of the National Assembly.<sup>90</sup> The committees are to review whether the appropriated funds were spent for approved purposes. Furthermore, section 88 of the Constitution provides that the National Assembly shall have power to cause to be directed an investigation into any matter to which it has powers to make laws and the conduct of affairs of any person, authority, Ministry or government department charged with the duty or responsibility for executing or administering laws made by the National Assembly, and disbursing or administering moneys appropriated by the National Assembly.<sup>91</sup>

88. Muhammed (n 21) 54.

89. *ibid* 56.

90. 1999 Constitution of the FRN, s 85(2).

91. *ibid* s 88(1).



It is not in doubt that the legal framework on budget making in Nigeria encourages the Legislature to do more than perfunctory role of merely signing budgetary bills. Despite this, people still have doubts as to the scope of the power of the Legislature to tamper with budget estimates submitted to it by the Executive. It is important that that there should be clear and express provisions of the Constitution to determine the stretch of their powers, as it is the case in many jurisdictions like Malawi, Kenya and Ghana. This will bring the perennial conflict between them to an abrupt end. It is opined that such amendment of the law should take cognisance of the extensive roles being played by the Legislature in fiscal decisions of countries in the modern times and also the need for the public to be more involved in the decisions that affect the generality of people in the country and also to encourage transparency.

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