

APPRAISAL OF THE ROLE OF THE NATIONAL ASSEMBLY IN THE APPROPRIATION PROCESS IN NIGERIA: HINTS FROM CROSS-COUNTRY SURVEY

BY

DR. SAMUEL OGUCHE*

Abstract

One of the crucial functions of the National Assembly (NASS) is appropriation of funds for the running of the government. Appropriation is one of the key components of legislative oversight which earns the legislature power of the purse. One of the challenges that have plagued performance of the NASS in recent time, particularly the 8th Assembly, is the allegation of ‘padding’ in the appropriation process which has brought the legislature to ridicule in public domain. This paper undertakes an analysis of the role of the NASS in the appropriation process and contends that an appropriation bill is like every other bill. The paper finds succour in section 59 of the Constitution which clearly gives the NASS powers over appropriation bills. It contends that going by the clear provisions of the Constitution as well as judicial authorities, especially the unassailable judgment of the Federal High Court in *FALANA V. THE PRESIDENT, FEDERAL REPUBLIC OF NIGERIA & 3 ORS*, the NASS has the powers to alter an appropriation bill presented by the President. It further maintains the position that what the President lays before the NASS is a mere proposal which the latter is not bound to accept wholly. The completely dismisses the notion of ‘padding’ and, among others, recommends pre-budget consultations between the legislature and the executive to reduce disagreements in the process of passage. It also recommends passage of a budget process law to regulate appropriation process in Nigeria.

Key words: Appropriation, National Assembly, Constitution, Budget, Assent

1.1. Introduction

The beauty of democracy lies in the effectiveness of the voice of the majority. Nigerian democracy, like many others in the world, thrives on the principle of separation of powers under which each arm of government has constitutionally assigned roles in governance. No economic policy tool at the disposal of the government can be said to be more significant than the budget, which is a comprehensive assemblage of the priorities of the nation. In view of the place of budget in the governance of the nation, the legislature is the appropriate institution to scrutinise it in line with the identified needs of the nation, vis-à-vis available resources.

* **SAMUEL OGUCHE** is a Research Fellow, National Institute for Legislative and Democratic Studies, National Assembly, Abuja. Email: oguchesamlaw@yahoo.com, samuel.oguche@nils.gov.ng

Appropriation process is a significant aspect in the governance of any country, hence the heated debates often associated with it. Since the enthronement of democracy in Nigeria in 1999, appropriation process at the federal level has often left tongues wagging in the context of the powers of the NASS to alter an Appropriation Bill laid before it by the Executive Arm of government. This singular issue has led to deterioration in the relationship between the legislature and the executive, with the attendant negative effects in the governance of the country. The recurrent friction between the executive and legislative arms of government on the powers of the NASS to alter budget estimates placed before it by the executive resulted in unholy delay in the passage of the 2016 budget estimates. Lawyers, scholars and other commentators are not agreed on the extent of powers the NASS exudes over an Appropriation Bill. While some are of the view that the NASS can alter an Appropriation Bill, others believe that it has no such powers and can only approve what is sent by the Executive by passing it into law or reject same and refer it back to the Executive for further action. Malpractices associated with public finance management in Nigeria are connected with the budget process.

This paper examines the relevant constitutional provisions relating to the powers of the NASS in the budget process, taking hints from other jurisdictions. It x-rays the legal framework and procedure for enactment of an Appropriation Act, including pre-budget and post budget laying roles of the NASS. The paper contends the in view of the clear and unambiguous provisions of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), the NASS cannot be a rubber stamp legislature in the passage of an Appropriation Bill laid by the President. It concludes that mutual respect and understanding among the arms of government, within defined constitutional limits, is indispensable in the passage of an Appropriation Bill and good governance.

The purpose of this paper is to make recommendations that would facilitate passage of appropriation bills and reduce legislature/executive frictions in Nigeria.

1.2. Legal Framework and Procedure for Enacting an Appropriation Act

Passage of money bills in Nigeria is regulated by the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and the Fiscal Responsibilities Act, Cap. F40, Laws of the Federation of Nigeria, 2004. The statutes provide for the extent of involvement of the legislature and the executive in the national budget process. From the provisions of the Constitution, the executive is not permitted to expend monies that have not been appropriated by the NASS, subject to a few exceptions. The budgeting pattern under the Constitution is

rooted in Chapter II that spells the Fundamental Objectives and Directive Principles of State Policy, directing the state to “harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy” and also “control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity”.¹ The Constitution vests the NASS with power of purse by providing as follows:

No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those moneys has been authorised by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of section 81 of this Constitution.²

In addition to the above, the Constitution prohibits withdrawal of moneys from any public fund of the Federation, other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been authorised by an Act of the NASS.³ The power of the purse means that the government can only spend money for purposes authorized by the Legislature. Consequently, the NASS is vested with the sole power of prescribing the manner of withdrawal of moneys from the Consolidated Revenue Fund or any other public fund of the Federation; such prescribed manner being the only means of withdrawal of monies from those funds.⁴

The budget process begins with the initiation of the Appropriation Bill by the President who is empowered by the Constitution to “cause to be prepared and laid before each House of the NASS at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year”.⁵ Certain issues are apparent from this constitutional provision. First, the budget process is initiated by the President. By the expression “cause to be prepared...” the budget is prepared through an Appropriation Bill at the instance of the President who takes responsibility for the contents of the Bill. This position is strengthened by the Constitution vesting executive powers of the Federation in the President which shall 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.⁶ Second, the budget is laid before both Houses of the NASS after preparation. Third, the preparation and

¹ Section 16(1) (a) & (b)

² Ibid, section 80(2)

³ Ibid, section 80(3)

⁴ Ibid, section 80(4)

⁵ Ibid, section 81(1)

⁶ Ibid, Section 5(1)(a)

laying of national budget is done at any time within the year but not within the year to which it relates. The implication is that the budget of a particular year must be laid at any time in the preceding year. Fourth, what the President lays before both Houses of the NASS are mere estimates that cannot qualify as a budget by any standard. The Budget itself is a law which is an Act of the NASS and not that of the Executive.

The Constitution vests the power of initiation of budget in the President because, being the head of the executive arm of government, has the function of implementing or executing Acts of the NASS. Consequent upon such direct involvement of the executive arm in governance, it accords with common sense to vest such powers in the executive.

1.3.Procedure for Enactment of Appropriation Act by the National Assembly

As stated above, what the executive lays before the NASS are mere estimates. On the basis of section 81(2) of the Constitution, 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. Once an Appropriation Bill is laid by the President in line with section 81 of the Constitution, each House commences legislative action on it in line with the provisions of the Constitution and the Standing Orders.⁷

It is interesting that the Constitution, particularly section 81, does not specifically provide for procedure for passage of the Appropriation Bill. This may be due to the fact that elaborate provisions are already contained in sections 80 and 4. Section 59 which elaborately covers money bills vests the NASS with final authority over passage of the bill into law.

The point must be made here that section 80(2) of the Constitution that prohibits withdrawal of moneys from the Consolidated Revenue Fund except upon appropriation by the NASS, admits of an exception under the Constitution. The exception is that if by 1st of January the appropriation bill has not been passed into law, President is allowed to 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 months or until the coming into operation of the Appropriate Act, whichever is

⁷ Aduba, J.N. & Oguche, S.: *Key Issues in Nigerian Constitutional Law* (Lagos, NIALS Press, 2014)p.303

the earlier.⁸ The essence of this provision is to prevent the running of government from being grounded in the absence of the appropriation bill being passed into law. However, such withdrawal of unappropriated funds must not exceed six months and recourse shall be had to the Appropriation Act of the preceding in terms of the amount to be withdrawn within the specified period. It is submitted that the timeframe of six months is too long and this constitutes a shortcoming in the appropriation process.

1.4.Pre-Budget Laying Role of the National Assembly: Constitution of the Committee on Appropriations

The Appropriation Committee is one of the Standing Committees at both the Senate and the House of Representatives. Standing Committees are established along policy lines have specific areas of jurisdiction and their life may be as short as the consideration of one specific bill or as long as the life of the Parliament.⁹ The Committee on Appropriations is established by the Standing Orders of both Houses of the NASS.¹⁰ In the House of Representatives, it consists of a minimum of 37 and maximum of 40 members and must be constituted at the commencement of the life of the House.¹¹ This means that this Committee, like others, does not outlive the life of the House. The Committee is vested with jurisdiction to appropriate funds for execution of government programmes and projects, as well as holding hearings on the Budget as a whole.¹² It must be noted that the Committee must hold hearings within 30 days after the transmittal of the budget to the NASS each year, with particular reference to the basic recommendations and budgetary policies of the President in the presentation of the budget; and the fiscal, financial and economic assumptions used as basis in arriving at total estimated expenditures and receipts.

It can be said with certainty that despite the fact that the budget is initiated by the President, representing the executive, the role of the NASS in the appropriation process actually begins before the budget is laid, since the Committee on Appropriations is constituted at the commencement of the life of the Assembly.

1.5.Post-Laying Role/Procedure

⁸ Section 82

⁹ Hamalai, L., (Ed.): *Committees in the Nigerian National Assembly: A Study of the Performance of Legislative Functions, 2003-2013* (2nd ed.) (Abuja, National Institute for Legislative Studies, 2014) p.25

¹⁰ Order XVIII, Rule 130 of the Standing Orders of the House of Representatives and Order 88 of the Senate Standing Orders 2011 (As Amended).

¹¹ Rule 30(1)

¹² Rule 30(2)

Budget Presentation/Speech: The immediate budget role of the NASS begins by the laying of the budget by the President, including the budget speech at the time of laying. The Appropriations Bill is laid or presented at a joint sitting of both Houses. The Appropriations Bill presentation speech of the President is deemed to be the First Reading of the Bill. This means that the first reading of an Appropriation Bill is done at a joint sitting of both Houses. After this step, the Rules and Business Committee of each House comes in to fix a date for second reading of the Bill.

Second Reading: Unlike the first reading that is done at a joint sitting, the second reading is done at a separate sitting of each House. At the second reading, the Bill is debated at different sittings of each House during which the general principles and import of the Appropriation Bill are debated.¹³ The Committee on Appropriations takes over and coordinates the process, where each Standing Committee transforms into a Sub-Committee of the Appropriations Committee. It has been said that on the date of the presentation of the Sub-Committee's Report, including the recommendations, the Chairman of the Appropriation Committee is the 'Floor Manager' while the Chairman of the Sub-Committee whose Report is being presented is the 'Assistant Floor Manager.'¹⁴ The motion for the second reading of the Appropriation Bill is moved by the Leader and seconded by the Deputy Leader. Debate is confined to the general, financial and economic state of Nigeria as well as the government financial policy. Unlike a general bill, a money bill cannot be killed at the second reading stage but all Members have the right to debate the bill. Significantly, Committee work on the budget centres on budget defence as opposed to Committee hearings as is the case in general bills.¹⁵ At the close of the sub-committee work, the Appropriation Committee collects, collates and compiles a report which it lays at plenary. Consequently, each sub-committee of the Appropriations Committee is given charge over the Heads of Estimates of the Ministry for which it has oversight responsibilities.¹⁶ At this stage, legislative responsibilities are shared between the Committee on Appropriations and the sub-committees, hence the Appropriation Bill itself is handled by the former while the Heads of Estimates, which details the expenditure requests, are handled by the sub-committees, who are

¹³ Dan-Azumi, J., & Gbahabo, T. (Eds.): *16 Years of Law Making: 4th-7th National Assembly* (Abuja, National Institute for Legislative Studies, 2016) p.9

¹⁴ Ahmadu, R.A., "Appropriation Procedure - An Aspect of the Budgetary Process of Nigeria", Ouagadougou Session, 2001, www.asgp.co/sites/default/files/.../HCTENHNRMSMTPRLLHXSESQUUQTPIOM.pdf (Accessed on 20/6/2016)

¹⁵ Sam-Tsokwa, A.T. & Ngara, C.O.: "The National Assembly and the Budget Process in Nigeria's Fourth Republic: Tackling the Challenges of Timeliness", *Canadian Social Science* Vol. 12, No. 5, 2016, pp. 1-7 @p.4

¹⁶ See Policy and Legal Advocacy Centre: "A Guide to Nigerian National Assembly", 2015, p.26, available at <http://placng.org/wp/wp-content/uploads/2017/05/A-Guide-to-the-Nigerian-National-Assembly.pdf> (Accessed on 25/6/2017)

at liberty to extend invitation to the relevant Ministries, Departments and Agencies (MDAs) to appear in defence of those Heads of Estimates. This is the popular budget defence in the Appropriation process.

All Sub-Committees deliberate and report their findings to the Appropriations Committee, after which a clean copy of the Report is prepared and presented on the Floor of the House on a date to be fixed by the Rules and Business Committee. The actual presentation of the Report entails circulation of copies to all Members, and the Chairman of the Rules and Business Committee sets a date for formal consideration of the Report by the whole House as one Committee to pass resolutions on each item of the Head of Estimates. For this purpose, the “Committee of the Whole” is referred to as the “Committee of Supply” and presided over by the Speaker or Senate President or their Deputies. Here, each item of expenditure for each ministry is considered one after the other and any change adopted during consideration must be effected before the third reading.¹⁷

Reporting: This is the stage where the Appropriations Committee submits its final report which contains a summary of amendments agreed to by the House and the amount approved for each Ministry, Department or Agency (MDA).

Third Reading: After adoption of the Report as submitted by the Appropriations Committee, the Bill goes through Third Reading whereupon it is passed as the Appropriation Bill. Third Reading procedure in an Appropriation Bill is exactly as it is in a general bill. According to PLAC, the Appropriation Bill passed at Third Reading is sent to the other House for concurrence.¹⁸ This position is not correct. Our position here is predicated on the fact that since it is a constitutional requirement that President lays the Appropriation Bill before both Houses, no question of one House transmitting the Bill to the other House for concurrence arises. On the contrary, where the Bill is passed by one of the Houses 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 fourteen days thereafter arrange for and convene a meeting of the Joint finance committee to examine the bill with a view to resolving the differences between the two Houses.¹⁹ The intervention of the joint finance committee becomes necessary largely due to the possibility of both Houses ending with different outcomes. Where, however, the joint finance committee fails to resolve the differences, the Bill shall be presented to the NASS

¹⁷ Ibid

¹⁸ *Ibid*, p.28

¹⁹ Section 59(2), CFRN

sitting at a joint meeting where each legislator has a vote, and if the Bill is passed at such joint sitting, it shall be presented to the President for assent.²⁰

Assent: Assent in the context of legislation signifies formal approval of a bill as passed by the legislature. Where an Appropriation Bill is passed by the NASS, it is transmitted to the President for assent; such transmission being the function of the Clerk to the NASS. The President has 30 days from the date of receipt of the Bill within which to signify assent, or otherwise.²¹ A combined reading of section 59(3) and (4) discloses that the President may either assent, fail to signify his assent or withhold assent. Failure to signify his assent is tantamount to withholding assent. However, the difference between failure to signify his assent and withholding of assent lies in the fact that in case of the former, the President keeps mute and does nothing about the Bill while in the case of the latter he expressly refuses assent. It is submitted here that failure to signify his assent means implied withholding of assent. In either case where the President does not give assent within 30 days of after the presentation of the Bill to him, the bill shall again be presented to the NASS sitting at a joint meeting, and if passed by two-thirds majority of members of both houses at such joint meeting, the bill shall become law and the assent of the President shall not be required. What does the Constitution intend by the bill being passed by two-thirds majority of members of both Houses in a joint sitting? Is this requirement satisfied by all the members merely voting at a joint sitting? This question was answered in *National Assembly v. President*²² where it was held that for the Bill to be validly passed by the joint meeting of the National Assembly after the President withholds his assent, it has to go through the whole process of law making again. This means that the entire process of passing an Appropriation Bill after the presentation of the Budget by the President must be repeated.²³

1.6. Contestations on the Power of the National Assembly to Alter the Budget Presented by the President

²⁰ Ibid, section 59(3), CFRN

²¹ Ibid, section 59(4), CFRN

²² (2003) 9 NWLR Pt. 824 p. 104

²³ The position in the United States of America is less rigorous and has automatic effect. In the US, if the President does nothing within 10 days after a bill (general or money) is presented to him when Congress is on session, the bill shall automatically become law.

Recent developments in Nigerian have provoked commentaries, arguments and counter-arguments as to the extent of the powers of the NASS as regards the budgeting process. Lawyers and other commentators are not agreed as to the limits of powers of the NASS. While some share the view that the NASS has powers to alter the budget²⁴, some contend that the Appropriation power enables the NASS to reduce but not to increase expenditure and that it lacks power to introduce new items into the Budget. On the other hand, others believe that such powers are unavailable to the legislative arm²⁵, hence the position that makes the NASS a mere rubber stamp in the budgeting process. Indeed many commentators, including Lawyers, have contended that the power of NASS is restricted to examining the Budget and making corrections where necessary.

Language of the Constitution

For proper appreciation of the legal position, an understanding of the provisions of section 59 of the Constitution is imperative. It is clear from the provision that the budget is laid before the NASS as a bill (Appropriation Bill). The effect is that the budget is an Act which only the NASS has constitutional power to enact.

Implication of Section 59(1)

This provision makes brings budget to the class of bills (Appropriation Bill or Supplementary Appropriation Bill). The implication of this is that an Appropriation Bill is passed in the same form like every other bill. As stated above, the bill process at the NASS is a function of certain stages such as first reading, second reading, committee stage, reporting, third reading, concurrence by the other chamber, conference committee where necessary for harmonisation and assent. At the committee stage, public hearings are conducted and inputs of stakeholders and the general public is aggregated and necessary improvements made to the bill before reporting/laying at plenary. In the same way, it is expected that an appropriation bill be subjected to scrutiny in the interest of the nation. That being the case, an appropriation bill is not expected to remain intact as laid by the President.

²⁴ Dogara, Y.: “Legislative perspectives on the budget process in Nigeria”, being an address by the Hon. Speaker of the House of Representatives at the first edition of The *Gallery Colloquium* series organised by Orderpaper.ng on 26th September, 2016, at the Ladi Kwali Hall, Sheraton Hotel Abuja.

²⁵ See “National Assembly Wrong To Alter Budget, Falana Says”, Sahara Reporters, available at <http://saharareporters.com/2017/06/26/national-assembly-wrong-alter-budget-falana-says> (Accessed on 26/6/2017)

Implication of Section 59(2)²⁶

In acknowledgment of the obvious fact that the NASS is expected to alter the Appropriation Bill presented by the President, the subsection foresees a situation where a House delays passage of the Bill as a result of controversies arising therefrom. Hence, the subsection provides remedial action in case of such deadlock by empowering the Senate President to convene a meeting of the joint finance committee to ensure that the differences are resolved. By this provision, it can be said with accuracy that the drafters of the Constitution intended to give the NASS the power to alter the budget laid by the President.

Effect of Section 59(3)²⁷

The implication of this provision is that the joint meeting of both Houses of the NASS is superior to the joint finance committee. Consequently, in the event of failure of the joint finance committee to resolve the differences in the versions of both Houses, the bill goes back to joint sitting of the Houses for passage after which it is presented to the President for assent. Again, it is the intention of the framers of the Constitution that the NASS has the powers to effect alterations to the budget and that is the essence of the assent of the President. If the framers of the Constitution had intended that the NASS be a mere rubber stamp, the requirement of assent of the President would not have been there as such assent would mean nothing in a document submitted by the President that has not been altered. Assent here signifies approval or acceptance of an act or omission.

Effect of Section 59(4)²⁸

Just like the position with general bills, this subsection gives veto power to the President and a corresponding power to the NASS to override the veto power of the President. Talking about legality of alteration of the budget by the NASS, why does the Constitution envisage a situation where the President vetoes a bill that is intact as he had presented or laid before the NASS? Is

²⁶ This subsection provides that “Where a bill to which this section applies 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 fourteen days thereafter arrange for and convene a meeting of the joint finance committee to examine the bill with a view to resolving the differences between the two Houses.”

²⁷ This provides that “Where the joint finance committee fails to resolve such differences, then the bill shall be presented to the National Assembly sitting at a joint meeting, and if the bill is passed at such joint meeting, it shall be presented to the President for assent.”

²⁸ Where the President, within thirty days after the presentation of the bill to him, fails to signify his assent or where he withholds assent, then the bill shall again be presented to the National Assembly sitting at a joint meeting, and if passed by two-thirds majority of members of both houses at such joint meeting, the bill shall become law and the assent of the President shall not be required.

the President reasonably expected to invoke his veto powers if the bill has not been altered? Those who share the view that the NASS cannot alter a budget presented by the President have the above few questions to contend with. A further exposition of the clear intention of the framers of the Constitution lies in the overriding power of the NASS. If the NASS can proceed to pass the Appropriation Bill without requiring the assent of the President, it shows that the Constitution vests ultimate power over the budget making in the NASS and not the President.

One obvious fact from section 59(3) and (4) of the Constitution is that the ultimate power in the passage of an Appropriation Bill resides in the House of Representatives. Passage of the Appropriation Bill where the joint finance committee fails to resolve the differences is by the joint sitting of both houses.²⁹ Similarly, overriding the veto power of the President is by two-thirds majority of all members of both houses at a joint sitting. Under the Constitution, the House of Representatives is made up of 360³⁰ members while the Senate has 109³¹ members, bringing the total number to 469. Simple arithmetic from the above figures shows that two-thirds of 469 is 313, hence the House of Representatives that has 360 members has more than what it takes to pass the budget without stress. On this note, the present writers hold the firm view that the framers of the Constitution, in their wisdom, divided powers between both houses. While the Senate reserves the power of confirmation of appointments, the ultimate power over budget resides with the House of Representatives.

According to Hon. Gbajabiamila³², three key stakeholders are involved in the budget process thus: the executive represented by the President who presents the budget, the legislature and legislators who approve the budget and authorise spending in line with its approval and the Nigerian people who are meant to be the ultimate beneficiaries.³³ The seasoned legislator, while canvassing the position that the NASS has constitutional powers to alter budget estimates laid by the President, drew the following analogy:

For simple understanding, the President is analogous to the head of the family, the legislature is the family banker who keeps and gives money to the family for spending based on its stated needs, and the people are the children in the family who are the ultimate beneficiaries. The father presents the needs of his children

²⁹ section 59(3)

³⁰ Ibid, section 49

³¹ Ibid, section 48

³² Leader of the House of Representatives

³³ Gbajabiamila, F: "Budget and Budgeting Process in National Assembly", being the text of a paper delivered at the Progressive Governors'/Legislators/Civil Society Organizations Roundtable on 24th of March, 2014 at Barcelona Hotel, Wuse 2, Abuja

and family to the bank for necessary approval and funds, the bank in this case legislature after going through income and expenditure of the family grants approval so that the family can continue to develop and grow, produce and reproduce.³⁴

The legislature as the family banker in the above analogy exposes the centrality of the legislature in the budgeting process. Apart from the provisions of the Constitution examined above, the Fiscal Responsibility Act (FRA) 2007 has far-reaching provisions relating to appropriation. The Act empowers the Fiscal Responsibility Commission to, among others, monitor and enforce the provisions of the Act and by so doing, promote the economic objectives contained in section 16 of the Constitution.³⁵ The said section 16 of the Constitution which contains economic objectives under the Fundamental Objectives and Directive Principles of State Policy, enjoins the State to direct its policy towards ensuring “that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.”³⁶ The same section 16 prohibits operation of the economy in such a way that permits concentration of the commonwealth or the means of production in the hands of a few individuals or of a group.³⁷ According to Ekpu and Iweoha³⁸, the critical importance of section 3 of the Fiscal Responsibility Act is that where the President presents a budget in contravention of section 16 of the Constitution, the NASS may be brought under public pressure (through Public Hearing opportunities) to include estimates which would make the budget comply with the provisions of section 16.

Apart from the above, the FRA makes provision for a Medium Term Expenditure Framework (MTEF) which the Federal Government is mandated to, in consultation with the States, place before the NASS. The MTEF is to cover a period of three (3) years, to serve as a macro-economic framework.³⁹ The significance of the MTEF is further unveiled by its being the basis for the preparation of the estimates of revenue and expenditure required to be prepared and laid before the NASS under section 81 (1) of the Constitution.⁴⁰ A combined reading of the various provisions of the FRA discloses beyond doubt that the NASS is empowered by the

³⁴ Ibid

³⁵ Section 3(1)(a), FRA

³⁶ Section 16(2)(d), CFRN 1999 (As Amended)

³⁷ Section 16(2)(c)

³⁸ Ekpu, A.O. & Iweoha, P.I.: “Powers of the Executive and Legislature in Budget Making Process in Nigeria: An Overview”, *Journal of Law, Policy and Globalization* (online), Vol. 57 2017, p.48

³⁹ Section 11

⁴⁰ Section 18(1) FRA

legal framework for budgetary processes in Nigeria to alter budgetary estimates prepared and laid by the President.

Our position that the NASS can alter budget estimates laid before it by the President has received judicial blessing through the verdict of the Federal High Court in *Falana v. The President, Federal Republic of Nigeria & 3 Ors.*⁴¹In this case, the Plaintiff instituted the suit in which the 1st and the 3rd Defendants (the President and NASS respectively) were sued, being the executive and the legislative arms of the Government of the Federation. The 2nd Defendant is the Attorney General of the Federation while the 4th Defendant is the Auditor General of the Federation. In his originating summons, the Plaintiff set down the following four questions for determination of the Court:

1. Whether by virtue of section 81 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 3rd Defendant is competent to increase or review upward any aspect of the estimates of the revenues and expenditure of the Federation for the next financial year prepared and laid before it by the 1st Defendant.
2. Whether by virtue of section 85 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 3rd Defendant is competent to audit the public accounts of the Federation, appoint auditors for statutory bodies or conduct periodic checks of all government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the NASS in any manner whatsoever and howsoever.
3. Whether by virtue of sections 88 and 89 of the Constitution, the 3rd Defendant is competent to summon corporate bodies and private individuals while conducting investigation into any matter.
4. Whether by virtue of section 214 of the Constitution, the 3rd Defendant is competent to probe or investigate the allegations of corrupt practices, fraud, murder and other criminal offences committed in statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the NASS in any manner whatsoever and howsoever.

Arguing that the NASS (3rd Defendant) has no powers to alter budget estimates submitted to it by the President of the Federal Republic of Nigeria (1st Defendant), the Plaintiff contended that

⁴¹ (Unreported) Suit No. FHC/ABJ/CS/259/2014

once budget estimates are submitted by the President to the NASS, it is the duty of the NASS to pass same as “Appropriation Bill” into law. It was further argued that the preparation of the budget being an “executive function”, the NASS is excluded from making inputs into it. The Federal High Court refused to be convinced by this reasoning and held that it lies within the legislative competence of the NASS to alter budget estimates laid before it by the President. The Court made the following remarkable pronouncement:

In the light of these analysis (sic), I will answer question one in the “Originating Summons” in the *negative*. The 3rd Defendant was not created by the drafters of the Constitution and *imbued* with the powers to receive “budget estimates” which the 1st Defendant is *constitutionally empowered to prepare* and lay before it as a “*rubber stamp*” parliament. The whole essence of the “budget estimates” being required to be *laid* before the 3rd Defendant, is to enable the 3rd Defendant as the assembly of the representatives of the people, to debate the said “budget proposals” and to make its own *well informed legislative inputs* into it. What the 3rd Defendant cannot do, is to *prepare* “budget estimates” for the 1st Defendant or to disregard the *proposals laid before it* and *substitute* it with its *own estimates*.⁴²

The rationale for the above position of the Court is clear from the judgment. It is the Executive Arm under the leadership of the President that controls and superintends all agencies, corporations and commissions that generate the revenue for the running of government. Consequently, it will amount importing into the provisions of section 81 of the Constitution what the drafters neither intended nor put into it to say that the NASS is not competent to increase or review upward any aspect of the estimates of the revenues and expenditure of the federation for the next financial year prepared and laid before it by the President of the Federal Republic of Nigeria.

The position taken by the Federal High Court is faultless based on the long established principle of literal interpretation of the Constitution which the Court gave a nod to. The literal approach is adopted where the wordings of the Constitution are clear and unambiguous. This is the plain meaning approach to the interpretation of the Constitution, which states that if the precise words used in the Constitution are plain and unambiguous, the court is bound to construe them in their natural ordinary (grammatical) sense. In this case, it is immaterial whether or not such interpretation leads to manifest injustice or absurdity. The rationale behind this rule is that words are the only ways through which intentions of human beings are declared and if words

⁴² Per Hon. Justice G.O. Kolawole at p. 15 of the Judgment delivered at the Federal High Court Abuja on the 9th day of March, 2016.

are clear and unambiguous, then effect must be given to them in their natural ordinary or grammatical sense.⁴³ The rationale for this approach is that the drafters of our Constitution are not fools and that they intended the natural meaning and consequences of their words. In interpreting the law, the role of the court here is determined by the language used. If the language is plain and clear, the court will give the wordings therein their literal meaning and the court has little or nothing to add. In this case, the court's opinion is no different from that of an ordinary man. In *Attorney-General of the Federation v. Abubakar*⁴⁴, the Supreme Court held thus:

What appears to be a settled principle of interpretation from all the authorities cited before us and others I have had the opportunity to read is that, where the language used in the provision of a statute and or the Constitution is plain and unambiguous, effect must, of necessity, be given to its plain and ordinary meaning. It is that clear and unambiguous language that best conveys the intention of the lawmaker. The lawmaker must be taken to have intended the meaning expressed in such clear and unambiguous language and the court will not be at liberty to go outside the very provision in an ostensible bid to ascertain the intendment and purpose of the provision. The obvious duty of the court in such a situation therefore is not the determination of what the lawmaker meant, but the meaning of the plain language used which, without more, best expresses his intention...⁴⁵

In totality, the above authorities establish without any iota of doubt that the NASS as the representative of the people in Nigerian representative governance cannot rubber stamp budget estimates without debates and inputs in line with the spirit of the Constitution. Consequently, it is a misconception of the law to say that budget proposals as presented to the NASS by the President must be passed into law as presented. This calls for a short voyage into the United States of America (USA) for comparative analysis of appropriation processes.

1.7. Law and Practice in the United States of America

Budgeting process in Nigeria is modelled after the USA as enshrined in its Constitution which provides that “No money shall be drawn from the Treasury, but in consequence of Appropriations made by law.”⁴⁶ This provision has similar ingredients as section 80 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended). Certain common

⁴³ Oguiche, S.: “The Approaches and Canons of Interpretation of the Constitution and other Statutes: A Panoramic Survey of Recent Developments”, University of Maiduguri Law Journal, Vol.8 (2010), pp. 1-24

⁴⁴ (2007) All FWLR (part 375) 405

⁴⁵ Per Akintan JSC (Delivering the Lead Judgment) at P. 460, paras F-H.

⁴⁶ Article 1, Section 9 of the United States Constitution

ingredients arising from Article 1, section 8 and section 80 of the Constitution of the USA and the Federal Republic of Nigeria respectively are as follows:

- ❖ In the USA, all monies are paid into the USA Treasury while all Funds are paid into the Consolidated Revenue Fund or other Public Funds of the Federation in Nigeria.
- ❖ In the USA, no money can be withdrawn from the Treasury except through Appropriation. Similarly, in Nigeria, any withdrawal from the Consolidated Revenue Fund or other Public Funds of the Federation can only be made as authorised by the NASS.

The centrality of the legislature to the appropriation process in the United States has been emphasised at various forums. Commenting on this, Madison had this to say:

The House of Representatives cannot only refuse, but they alone can propose the supplies requisite for the support of the government. They, in a word, hold the purse—that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of government. This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.⁴⁷

An appropriations bill is treated as a regular legislative bill and is sent to the President for approval or veto. Congress can impose its will on the President by “overriding the veto” with a two-thirds vote of each chamber.⁴⁸ Following the growing complexity of the size and scope of government, coupled with series of disputes with the President relating to budget, the Congress, in 1974, passed the Congressional Budget and Impoundment Control Act of 1974, which was a milestone in the budget process in the United States. For the first time, the Act made provisions for an internal congressional budget process and created the two main instruments for enforcing compliance with the internal procedures: the House and Senate Budget Committees and the Congressional Budget Office (CBO). The Budget Committees draw up an annual overall budget resolution – an internal congressional agreement on spending and receipts – and then with the help of CBO “scorekeeping”, enforce the aggregate levels agreed to at the beginning of the year.⁴⁹

⁴⁷ Madison, J.: “The Federalist No. 58 - Objection That the Number of Members Will Not Be Augmented as the Progress of Population Demands Considered”, in Hamilton, A., *et al: The Federalist Papers*, (New York, Palgrave Macmillan, 2009) p.146

⁴⁸ Blöndal, J.R., *et al*, “Budgeting in the United States”, OECD Journal on Budgeting – Volume 3 – No. 2, 2003, p.18

⁴⁹ *Ibid*, pp.18-19

In USA, federal spending falls into two categories – mandatory and discretionary funding. Mandatory funding is spending on entitlement programs that are required by law and continue from year to year, such as Social Security, Medicare, and Medicaid. Mandatory funding accounts for the majority of federal spending (about 60%). The other category of spending is discretionary spending. This funding must be approved each year through the appropriations process. It has been observed that nearly all of the federal funding that helps to advance the work of America Forward and its Coalition organizations comes through discretionary programmes.⁵⁰

The President must submit an annual budget proposal to Congress to kick off the annual budget and appropriations cycle, and this must be done on or before the first Monday in February.⁵¹ This proposal includes the President’s recommendations for spending levels for various federal programs and agencies. A significant part of the United States’ budgetary process is that the President’s Budget proposal is a request and holds no obligatory authority over Congress. Once the President’s budget proposal is submitted to Congress, the Appropriation Subcommittees of both the House of Representatives and Congress commence hearings on parts of the budget within their respective jurisdictions for the purpose of ascertaining justification for the funding requests of administrative agencies.

Not later than six weeks after the President submits his Budget request, Committees submit views and estimates to Budget Committees. Senate Budget Committee must report concurrent resolution on the budget on or before the 1st day of April. Budget resolution is an agreement between the House and Senate that establishes overall budgetary and fiscal policy to be carried out through the appropriations process. The budget resolution is not sent to the President and does not become law. It is a guide for Congress as it considers budget-related bills such as appropriations and tax legislation. Congressional adoption of the budget resolution is required by Title III to be done on or before 15th of April. It has however, been noted that there is no penalty if the resolution is not completed by April 15th or at all, and has been rare in recent Congressional sessions. Instead, each chamber of Congress will pass its own resolution or pass a simple resolution that sets the total level of discretionary funding for the next fiscal year.⁵²

⁵⁰ See “America Forward: Federal Budget and Appropriations Primer”, America Forward Blog, <http://www.americaforward.org/the-federal-budget-and-appropriations-process-a-primer/> (Accessed on 4/8/2017)

⁵¹ Title III, sec. 300 of the Congressional Budget Control and Impoundment Act, 1974.

⁵² America Forward Blog, note 50 above

It is a precondition for consideration of Appropriation Bill by the Appropriations subcommittee of the House and Senate that Budget Committee hearings on the President's budget request be completed and the level of funding. It is only when this is done that the Appropriation subcommittees can commence consideration of the under their jurisdiction and report them to their respective full committees. Upon report of an appropriations bill to the full House or Senate by their respective Appropriations Committees, the bill becomes ready for general chamber consideration. 15th June is the target date for completion of action on reconciliation legislation by the Congress. Similarly, the House is required to complete action on annual appropriation bills on or before June 30.

As established above, the United States Congress can alter an appropriation bill. However, the Senate Rules prohibits amendments that are not germane to the subject matter in the bill.⁵³ The standards and procedures for determining whether or not an amendment is germane are not the same in the Senate and the House.⁵⁴

1.8. Comparative Notes

- ❖ Appropriation Bills are originated by the Executive and laid before the legislature in both jurisdictions, Congress and NASS in the US and Nigeria respectively.
- ❖ In Nigeria, the President is required to lay the budget proposal before the NASS at any time in each financial year for the next following financial year. In the USA, there is a timetable with respect to the congressional budget process for any fiscal year under which the President is required to submit the budget to Congress on or before the first Monday in February.
- ❖ While "financial year" in Nigeria means any period of twelve months beginning on the first day of January in any year, it means twelve months beginning on the 1st day of October to the 30th day of September in the USA.
- ❖ In both jurisdictions, the legislature has powers to make alterations to the budget proposals submitted by the President after subjecting the proposals to debate.

⁵³ Senate Rule XVI

⁵⁴ Saturno, J.V., *et al.*: The Congressional Appropriations Process: An Introduction, being a Congressional Research Services Report prepared for Members and Committees of Congress, 2016, p.7 <https://www.senate.gov/CRSpubs/8013e37d-4a09-46f0-b1e2-c14915d498a6.pdf> (Accessed on 4/6/2017)

- ❖ While issues of appropriations are handled by the Subcommittee on Appropriations in the US Congress, they are handled by the Committees on Appropriations in the NASS which are Standing Committees.
- ❖ Committees on Appropriation in the US and Nigeria report their recommendations to the full house for consideration.
- ❖ Both houses of Congress and NASS harmonise their versions of the Appropriation Bill before presentation to the President for assent. In the USA, once both houses agree to amendments made, the Measure is presented to the President for action which may be assent or veto. This position is the same in Nigeria.
- ❖ Both Congress and NASS have powers to override the President's veto. In the US, after a measure is presented to the President, he has 10 days to sign or veto the measure. In the event that no action is taken by the President, the bill automatically becomes law at the end of the 10-day period if Congress is in session. If the President decides to veto the bill, he sends it back to Congress. It is interesting that the Congress may override the veto by a two-thirds vote in both houses. The requirement in Nigeria is also two-thirds of members. However, in the case of Nigeria, the President has 30 days to signify his assent or otherwise.

1.9.Recommendations

Against the backdrop of the foregoing discourse, the following recommendations are proffered:

- ❖ There should be pre-budget presentation consultations and cross-fertilisation of ideas between the NASS and the President so as to minimise controversies and contentions between the two arms of government over the Appropriation Bill.
- ❖ The Offices of the Senior Special Assistants to the President on NASS matters (both Senate and House of Representatives) should take up the responsibility of fostering harmonious relationship between the Legislature and the Executive. Some of the controversies arising from consideration of Appropriation Bills can be easily averted with good relationship of both arms of government.
- ❖ The budget reform process in Nigeria should be fast-tracked to meeting emerging trends. In this case, the US model can be adopted to set timetable for budget process as it is in the Congressional Budget and Impoundment Control Act of 1974.
- ❖ The process of preparation and implementation of the budget should strictly be guided by the provisions of the Fiscal Responsibility Act, especially as it relates to the MTEF.

- ❖ The timeframe within which the President is authorised to withdraw moneys from the Consolidated Revenue Fund of the Federation in default of passage of the appropriation bill into law by 1st of January as provided in section 82 of the Constitution should be reduced from six months to three months by way of Constitution amendment.

1.10. Conclusion

The task of preparation of budget lies with the Executive arm of government as provided for in the Constitution of the Federal Republic of Nigeria 1999 (As Amended). However, once the Appropriation Bill is laid before the NASS, the legislative arm of government (NASS, takes control to debate on the general principles of the bill in the spirit of economic objectives provided in Chapter II of the Constitution and can alter its provisions in the overall interest of the nation. Bad blood generated between the two arms of government over the appropriation bill is avoidable with proper understanding and synergy. Since both arms of government act in the interest of the masses, they must understand that the budget is neither the property nor the exclusive right of any of them, therefore necessitating multi-stakeholder involvement in the budget process for the purpose of economic advancement and prosperity of the nation.