

## Who Can Do What? Delineating Legislative-Executive Powers in the Budget Process in Nigeria

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### **Abstract**

*Friction between the legislative and executive arms of government in Nigeria is very common and more particularly pronounced in the budget process. Question abounds on the extent of the powers of the National Assembly to alter by inserting new items in the Appropriation Bill presented by the Executive. While the proponents of the near unlimited powers of the legislature to alter the Appropriation Bill rely on the fact that the Executive cannot withdraw any funds from national purse without the approval of the Legislature and that as representatives of the people they should determine largely how the funds of the people is to be spent, on the other hand, the argument is that the drafters of the Constitution couldn't have envisaged a regime where the legislature begins to prepare appropriation bill instead of limiting itself to its constitutional function of passing same. This paper examines the extent of the constitutional powers of the legislature cum executive in the budget process in Nigeria with a view to ascertaining who can do what? The paper finds among others that the powers to lay an appropriation bill before the legislature lies with the President and that where the legislature begins to inputs completely new items into the Appropriation Bill, then it has usurped the powers of the President and is by that, serving as both the presenting authority and the passage authority. The paper recommends inter alia an organic budget law to contain a timeframe for presentation and consideration of a budget and that the wordings of the constitution which seems to permit ambiguity as to the extent of the powers of both arms of government in the budget process is amended for the purpose of clarity.*

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## 1. Introduction

Year in year out we are inundated with issues concerning the budget and appropriation process on the various media platform. Throughout the year, national discourse is majorly about the budget. Sometimes, the issues are about the failure of the President to submit the budget to the National Assembly early enough. When this is done, our discussions turned to the content of the budget. Other times, we worry about the failure of the legislature to speedily deliberate upon and pass the Bill for assent. When these issues appear settled, we begin to talk about the poor implementation or otherwise of the budget. Before you know it, it is time again for the budget to be submitted for the next fiscal year. This scenario keeps playing over and over. This underscores the importance of the budget in the life of any government. It is from the budget that we get funding for health, education, capital projects, and recurrent expenditure and so on. Hence, budgeting is one of the most important documents of policy making. It has been described as “the important economic policy tool of the national government.”<sup>3</sup> A government that gets its budgeting process right will have no room for failure. This Article examines the budget and appropriation process in Nigeria with a view to delineating the role of the Legislature and the Executive branches of government in the budgetary process and address some of the controversies that constantly trail the budget process in Nigeria. We shall begin with an understanding of what a budget actually is and why it is important for there to be one.

Simply put, the budget is a document through which the Executive and the Legislature decide how much money to spend, what to spend it on, and how to raise the money they have decided to spend. The budget is far beyond a collection of income and expenditure. It is the blueprint for a country’s socioeconomic policy for each fiscal year. A budget is thus, a plan, and a concrete programme of action, determining the activities the government will spend funds on in the pursuit of

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<sup>3</sup> ‘Parliament and the budgetary Process including from a Gender Perspective’ General Report on the Regional Seminar for Parliaments of South West Asia 26 – 28 May, 2003.

development goals; which sector of the economy will be expected to pay for said activities; how government will respond to economic disturbances in the short term; and who will be the direct and indirect beneficiaries of public services.<sup>4</sup> As observed by Bamishgbin,<sup>5</sup> the national budget is a statement containing a forecast of revenue and expenditure for a period of time, usually a year. It is a comprehensive plan of action designed to achieve the policy objectives set by the government for the coming year.

One point that is dominant in all definitions of 'budget' is that a budget is a plan for the future. While a budget is usually a plan, not all plans are budgets. People have certain expectations from government. These are usually informed by the Constitution, international treaties, policy statements, etc. One way of knowing whether the government intends to meet these expectations is by looking at the budget for the year. The budget is the financial statement of the government and contains the priorities of government. Hence, governments are not at liberty to spend outside what has been legislated upon as budget.

The process of birthing the national budget is usually contained in the country's laws. In Nigeria, sections 59, 80, and 81, of the Constitution<sup>6</sup> are some relevant provisions to consider when discussing the budgeting process. The Fiscal Responsibility Act,<sup>7</sup> and the Finance Control and Management Act<sup>8</sup> are also relevant legislation in this regard. Section 81 of the Constitution makes it clear that the president causes to be prepared, and presents the budget before the Legislature. The legislature by virtue of section 59, after deliberation may approve or reject the budget. The involvement of the

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<sup>4</sup>*Ibid*

<sup>5</sup> In Betaessays, 2014. Legislative and Executive Relationship in Nigeria Budgetary Process <<http://www.betaessays.com/budgetary-process-legislative-executive-relationship-nigeria-budgetary-process/>> accessed 13 August 2017.

<sup>6</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended) Cap. C20 Laws of the Federation of Nigeria (LFN) 2004 (referred to as 'the Constitution').

<sup>7</sup> Fiscal Responsibility Act 2007 No. 31.

<sup>8</sup> Cap. F26 LFN 2004.

Legislature in the budgeting process means that the budget must pass through some legislative process before it becomes active.

The legislative process is the process of government by which Bills are considered, and laws enacted.<sup>9</sup> It is an all-encompassing process which covers the preparation and drafting stage up to the signing of the Bill into law. Generally, the legislative process in Presidential systems of government is similar. It is however, not uncommon to find some minor differences in the approach adopted by different countries. Our focus here is the practice in the Nigerian National Assembly. The National Assembly is the law making branch of government and it is comprised of the Senate and the House of Representatives. The power of the National Assembly to make laws for the country is contained in Section 4 of the Constitution.<sup>10</sup> Therefore, the power to enact the Appropriation Bill is in consonance with the law making powers of the legislature.

## 2. The Budgetary Process

The budgetary process is similar to the law making process albeit with some slight differences. It is a combined effort of both the Executive and Legislature. A budget process has been defined as “a system of rules governing the decision making that leads to a budget, from its formulation, through its legislative approval, to its execution and evaluation. This system of rules is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices as in the federal level, and administrative directives.”<sup>11</sup> When the Appropriation Bill is sent to the National Assembly, it goes

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<sup>9</sup>Anyebe, P.A. 2016. Rules and Procedure Governing Legislative Process in Nigeria. *Journal of Law, Policy and Globalisation* 48. 71 <[www.iiste.org](http://www.iiste.org)> accessed 1 August 2017.

<sup>10</sup> For details on the law making process, see generally, ‘The Legislative Process’ <<http://www.nassnig.org/page/the-legislative-process>> accessed 2 July 2017.

<sup>11</sup>Heniff, B. Jr. & Keith, R. 2004. Federal Budget Process Reform: A Brief Overview cited in Ekeocha, P. 2012. An Analysis of the Federal Budgeting Process in Nigeria: Implication for Institutional Reforms for Achieving Timeliness” *Developing Country Studies* 2.6: 64.

through the legislative process prescribed by law and the Standing Rules of both Chambers. The budget is passed as an Appropriation Act; it has all the qualities of an Act of the National Assembly.

The budgetary process is regulated by the Constitution and other relevant statutes relating to the management of public finance. Usually, the President prepares the budget/appropriation Bill and presents it to the National Assembly for approval. The President signs the Bill as passed by the National Assembly and begins implementation, with the National Assembly having oversight function over the implementation. Writing on the budgetary process in Nigeria, Omitoogun and Oduntann<sup>12</sup> identifies four broad phases: formulation, approval, implementation, and auditing and reporting.

#### **(a) Formulation phase**

Before the Appropriation Bill is arrived at, a lot of efforts would have gone into preparing the document. Just as is the case with general legislation, the Appropriation Bill undergo serious scrutiny (within the Executive) before it is presented to the National Assembly. But unlike the case with general Bills, only the President has the mandate to prepare the budget. Section 81(1) of the 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 revenues and expenditure of the federation for the next following financial year.”<sup>13</sup> This means that only the President can cause an appropriation Bill to be prepared and have same sent to the National Assembly. The National Assembly or a private citizen cannot perform this function. The President can do this at any time within the financial year.<sup>14</sup> In Nigeria, a

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<sup>12</sup>Omitoogun, W. & Odutan, T. 2006. Nigeria: The National Budgetary Process, in *Budgeting for the Military Sector in Africa: The Processes and Mechanisms of Control* W. Omitoogun & E. Hutchful (Eds), (New York: Oxford University Press Inc. 2006) p. 158.

<sup>13</sup> See also, Section 13 of the Finance Control and Management Act.

<sup>14</sup> The lack of a time frame in a financial year within which the President can prepare and present the budget for approval has been identified as one of the leading causes of the habitual late submission of the budget by the

financial year begins on 1<sup>st</sup> January, and ends on 31<sup>st</sup> December of each year.<sup>15</sup> Hence, it is said that the Executive has the “financial initiative”, since only the Executive, through the President can request that an appropriation be made or increased, or propose to impose or increase taxation.<sup>16</sup>

The office responsible for budget and planning compiles the budget document and presents it before the Federal Executive Council (FEC), headed by the President. When the FEC certifies the estimates to be in line with the government’s goals and objectives and in accordance with its overall socio-economic policies, the document will be forwarded to the National Assembly as ‘Appropriation Bill’ for approval.

### **(b) Approval phase**

Though financial initiative lies with the Executive, the National Assembly holds the power of the purse. It is empowered to authorize withdrawals from the Consolidated Revenue Fund, and other public funds of the country.<sup>17</sup> It has been observed that: “the Parliament has ultimate control over public finances. This control is two-fold. First, taxes are imposed by legislation which must be agreed to by the Parliament. Secondly, and more importantly, government expenditure must also be authorized by legislation.”<sup>18</sup>

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Executive for the approval of the National Assembly. This is outside the purview of this treatise. For further reading, see: Sam-Tsokwa, A. and Ngara, C. 2016. The National Assembly and the Budget Process in Nigeria’s Fourth Republic: Tackling the Challenges of Timeliness. *Canadian Social Science* 112(5)  
<<http://www.cscanada.net/index.php/css/article/view/8458DOI>> accessed 7 July 2017.

<sup>15</sup> See Section 1 of the Financial Year Act, Cap. F27 LFN 2004.

<sup>16</sup> Infosheet 10 – The Budget and Financial Legislation <[http://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/00\\_-\\_Infosheets/Infosheet\\_10\\_-\\_Budget\\_and\\_financial\\_legislation](http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_10_-_Budget_and_financial_legislation)> accessed 17 August 2017.

<sup>17</sup> Section 80 of the Constitution.

<sup>18</sup> Infosheet 10 (n 14).

In the National Assembly, the appropriation goes through the law making process (with some modifications).<sup>19</sup> Section 59 of the Constitution contains provisions on how the National Assembly can exercise its power to enact money Bills or financial legislation (of which the Appropriation Bill is one). The Appropriation Bill will pass through the required readings for law making, and the Constitution contains provisions on how disagreements between both Houses can be resolved.<sup>20</sup>

When the Bill is passed by both Houses in identical form, it is forwarded to the President for assent. By virtue of Section 59(4) of the Constitution, the President has thirty days within which to sign the Bill or withhold assent. If the President signs the Bill, it becomes the Appropriation Act. But where assent is withheld, the Bill will be presented to the National Assembly in a joint sitting, and if it is passed at such joint sitting, it becomes law even without the president's signature.

### **(c) Implementation phase**

Now the Appropriation Act is ready; the Executive holds the power of the sword so begins implementing the budget by allocating funds to the projects provided for in the Appropriation Act. Money is released from the retain revenue base (the consolidated revenue fund) to the treasury in line with the approved estimates. The funds are then released to the various ministries and agencies upon request by the Accounting Officers. The moneys are used in line with the Appropriation Act for the approved purposes such as: contracts, services, supplies, debt servicing, and so on.

### **(d) Auditing**

While actual spending in line with the appropriation Act is ongoing, several mechanisms are kept in place to ensure that spending is done according to the approved limits and for the approved purposes. This is achieved through auditing and monitoring. Apart from the internal arrangements within the

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<sup>19</sup> For instance, the presentation of the budget to the National Assembly by the President is usually considered to be the first reading; the Appropriation Bill, unlike general Bills, cannot be killed at the second reading.

<sup>20</sup> Section 59(2 and 3)

various ministries and agencies to ensure accountability and proper spending, other external bodies have mandate to audit spending by government agencies. For instance, the National Assembly has power of oversight over government spending.<sup>21</sup> The Auditor-General also carries out periodic auditing of the accounts and expenditure of the various ministries and agencies.<sup>22</sup>

This practice is similar to the process in the various states in Nigeria, except that the States Legislature is unicameral.<sup>23</sup> The system provides for checks and balances which when properly explored will ensure proper application of public resources for the benefit of the society.

### **3. Legislative-Executive Conflict in The Budgetary Process**

#### **3.1 Separation of Powers**

Nigeria operates a Presidential system of government. It holds a strict adherence to the doctrine of separation of powers. The doctrine of separation of powers “refers to the idea that the major institutions of state should be functionally independent and that no individual should have powers that span these offices. The principal institutions are usually taken to be the executive, the legislature and the judiciary.”<sup>24</sup> The doctrine serves to safeguard liberties, guard against tyranny, and prevent abuse of power. Montesquieu is regarded as one of the earliest proponents of the doctrine of separation of powers<sup>25</sup> as he

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<sup>21</sup> Section 88 of the Constitution.

<sup>22</sup> Section 85 of the Constitution. Other bodies involved in monitoring the budget include: the Federal Ministry of Finance, National Planning Commission, Presidential Monitoring Committee, National Economy Intelligence Agency, Accountant-General of the Federation, and Office of the Auditor-General of the Federation.

<sup>23</sup> The States Legislature is the House of Assembly. For corresponding provisions on the powers of the House of Assembly of a state to pass laws, and power of the purse, see sections 100, 20-21 of the Constitution.

<sup>24</sup> Bennwell, R and Gay, O. 2011. The Separation of Powers <<http://researchbriefings.files.parliament.uk/documents/SN06053/SN06053.pdf>> accessed 26 August 2017.

<sup>25</sup> Long before Montesquieu, Aristotle and Lock have some work on the principles of separation of powers. See Singh, T. Principle of Separation of



carried out a comprehensive discussion of the subject in his 1748 book, 'The Spirit of Laws'. According to him:

*When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty ... there is no liberty if the power of judging is not separated from the legislative and executive ... there would be an end to everything, if the same man or the same body ... were to exercise those three powers.*<sup>26</sup>

Wade and Phillips<sup>27</sup> summarised the cardinal points of the doctrine thus:

- i. The same person should not form more than one organ of the government.
- ii. One organ of the government should not exercise the functions of the other organs of the government.
- iii. One organ of the government should not encroach with the function of the other two organs of the government.

This means that going by a strict interpretation of the separation of powers, none of the three branches may exercise the power of the other, nor should anybody be a member of any two of the branches. Instead, the independent action of the separate institutions should create a system of checks and balances between them.<sup>28</sup>

There is however, no water tight separation of the organs of government anywhere; not even in an advanced presidential system like that of the United States. Each organ is meant to complement the others in achieving the goals of governance; but no organ should encroach on the main functions of the other more than is permitted by law. Singh captured the position thus:

*The three organs must act in concert, not that their respective functions should not ever touch one another.*

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Powers and Concentration of Authority. <<http://ijtr.nic.in/articles/art35.pdf>> accessed 26 August 2017.

<sup>26</sup> Montesquieu, C.S.1989. *The Spirit of Laws* Anne Cohler, Basia Miller, and Harold Stone (trs) New York: Cambridge University Press.

<sup>27</sup> Cited in Singh (n 23) 2.

<sup>28</sup> Benwell and Gay (n 22).

*If this limitation is respected and preserved, it is impossible for that situation to arise which Locke and Montesquieu regarded as the eclipse of liberty-the monopoly, or disproportionate accumulation of power in one sphere.*<sup>29</sup>

In Parliamentary system of government, the doctrine of separation of powers does not enjoy much prominence as the legislature is fused with the executive. In the U.K. for instance, the powers of the Parliament, Executive, and Judiciary are closely intertwined. In fact, the legislature and the executive are seen as a close union as there is a nearly complete fusion of the executive and legislative powers.<sup>30</sup> However, by the constitutional reform of 2005 in Britain which saw the establishment of a new Supreme Court, the U.K. appears to be moving towards a more pronounced adherence to the doctrine of separation of powers.

In India, the doctrine of separation of powers is not strictly provided for in the Constitution of India, but the functions of the different organs of government have been clearly stated such that one organ cannot encroach on the function of another organ of government. Dissenting on a motion to introduce strict adherence to the doctrine of separation of powers to the Indian Constitution, it was observed:

*Instead of having a conflicting trinity it is better to have a harmonious governmental structure. If we completely separate the executive, judiciary and the legislature conflicts are bound to arise between these three departments of government. In any country or in any government, conflicts are suicidal to the peace and progress of the country .... Therefore in a governmental structure it is necessary to have what is called "harmony" and not this three-fold conflict.*<sup>31</sup>

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<sup>29</sup> Singh (n 23)

<sup>30</sup> Benwell and Gay, *ibid* (n 26).

<sup>31</sup> Hanumanthiya, S.K. cited in Singh (n 23) 5.

In the United States, the doctrine of separation of powers is deeply rooted in the country's constitution. Article I deals with legislative powers of the legislature, Article II vests executive powers in the President, and Article III provides for an independent judiciary. The election of members of Congress is separate from that of the President, and the President does not form part of Congress. The courts can declare an act of the legislature or executive as unconstitutional and void. Here, we see that the legislative, executive, and judicial powers are placed in separate entities.

Nigeria's Constitution is closely modeled after that of the United States. The separation of powers in Nigeria is a constitutional matter. The 1999 Constitution of Nigeria (as amended) expresses its commitment to the doctrine of separation of powers in Sections 4, 5, and 6, and the position remain the same all through the provisions of the Constitution. Section 4(1) of the Constitution provides: "The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives." Section 5 vests executive powers of the Federation in the President; while Section 6 vests judicial powers in the courts. No individual can be a member of more than one organ at a given time. For instance, Section 68(1) (d) of the Constitution is to the effect that if a member of the Senate or House of Representative picks up an appointment into the Executive arm of government, such a member ceases to be a member of the legislature.

The system is arranged in a manner to allow for checks and balances as each organ have some form of oversight over the other. This has however, led to many conflicts between the organs of government, especially between the Executive and the Legislature. There is always the issue of who has the power to do what as each organ lay accusations and counter accusations of usurpation of functions by the other. One noticeable area of such conflicts is in the consideration of the annual budget. A delineation of the role of each of the organ of government in relation to the budgetary process is necessary and forms the crux of our discussion in the following session.

### 3.2 Executive Cuts and Increase of Budget Estimates

*... The fact that there is a surplus in the treasury and a good reason, to spend the money does not empower the executive branch to draw from the treasury. Legislative control of money is well-nigh absolute. If it goes uncontrolled then only because the legislature itself is out of control.*<sup>32</sup>

This statement describes accurately, the position of the law with respect to public funds, and reemphasizes the position of the legislature as the holder of the power of the purse. The exercise of this power by the legislature in considering the budget through executive cuts and increase of budget estimates, reallocation of funds, or introduction of new items into the budget remains at the root of executive-legislative conflicts with respect to the budgetary process in Nigeria. The Constitution of Nigeria permits the Executive to prepare and lay the appropriation Bill before the National Assembly. Section 80(4) 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 the National Assembly.” Preceding subsections<sup>33</sup> are to the effect that the prescription by the National Assembly shall be by way of an Act. Hence, Section 81(1) 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 revenues and expenditure of the Federation for the next following financial year.” Section 59 is instructive as to the procedure of considering money Bills (of which the appropriation Bill is one).

So when the President lays the Appropriation Bill before the National Assembly for its consideration, what then are the limits of the powers of the National Assembly in reviewing or modifying the budget as laid? The uncertainty

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<sup>32</sup> Casper, G.1990. Appropriations of Power. *University of Arkansas at Little Rock Law Journal* Vol.

13<[http://chicagounbound.uchicago.edu/journal\\_articles](http://chicagounbound.uchicago.edu/journal_articles)> accessed 7 July 2017.

<sup>33</sup> Section 80 (2) and (3) of the Constitution.

surrounding this question is the main source of executive-Legislative conflicts with respect to appropriation of funds. Does the Legislature have unlimited powers to amend the Appropriation Bill as it considers fit? Can the Legislature introduce new projects not contemplated by the Executive into the budget and appropriate funds for such projects? Can the legislature increase the budget beyond what the Executive is willing to spend? To what extent can the Legislature reduce the budget? These are some of the questions begging for answers. Several jurists, analysts, commentators, etc., have expressed their opinions on the subject. Even the Court has been opportune to make some pronouncement on this.<sup>34</sup>

The conflict between the executive and the legislature over the appropriation process is not peculiar to Nigeria alone. According to Jon Mills,<sup>35</sup> “conflicts between the Legislative and the Executive branches on fiscal issues are a tradition as old as the separation of powers. Conflicts have occurred at the federal and state levels over the power of the purse.” In Mills’ ‘Battle of the Budget ...’, the author discusses the conflicts between the executive and the legislature in the state of Florida over the appropriation process, cut backs, budget increases, implementation and oversight. Here, we see how the Court and law review were used as instruments of conflict resolution.<sup>36</sup>

In Maitland’s account of the Constitutional History of England,<sup>37</sup> we see a comprehensive documentation of the struggles in England to attain legislative supremacy and control over public funds. It took several Centuries of advances and retreats for the English constitution to attain some levels of

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<sup>34</sup> *Femi Falana v. The President and 3 ors* (2014) Suit No FHC/ABJ/CS/295/2014. See: “National Assembly can alter budget estimates, court tells Falana” Tribune online (21 June 2017) <<http://www.tribuneonline.com/national-assembly-can-alter-budget-estimates-court-tells-falana/>> accessed 1 August 2017.

<sup>35</sup> Mills, J. 1994. Battle of the Budget: The Legislature and the Governor fight for Control. *18 Nova Law Review* 1101 <<http://scholarship.law.ufl.edu/facultypub/521>> accessed 7 July 2017.

<sup>36</sup> For details, see entirely: CRS Report (n 61 infra); Mills *ibid* 12; and Casper, *ibid* (n 30).

<sup>37</sup> Maitland, F. 1909. *The Constitutional History of England*. H. Fisher (Ed) Cambridge University Press. P.97

legislative supremacy. Writing on the situation in the 13<sup>th</sup> Century and generally the middle ages, Maitland observed:

*Here we shall do well to note that at this time and for several Centuries afterwards, no distinction was drawn between national revenue and royal revenue; the king's revenue was the king's revenue, no matter the source whence it came; it was his to spend or to save, as pleased him best; all was his pocket money; it is to later times that we must look for any machinery for compelling the king to spend his money upon national objects.*<sup>38</sup>

The struggle went on as several laws were passed and judgment given. Maitland will later report that in the 17<sup>th</sup> Century, some progress were made as Parliament asserted some control over public funds and money Bills.<sup>39</sup> Roskell agrees with this assertion when he stated:

*It is ironic that parliamentary appropriations of taxation had been a feature of medieval history from 1340 onwards, but that such appropriation to specific objects of expenditure was in abeyance under the Yorkists and Tudors, not to be resurrected until 1624, and then not re-introduced under royal government, until 1665, being made invariable only after 1688. In other words, if we are seeking a watershed in parliamentary history, we surely find it not in the Tudor age, but in the late-17<sup>th</sup> Century.*<sup>40</sup>

However, the control that Parliament seemed to have got over fiscal matters from the 17<sup>th</sup> Century soon witnessed a sharp decline. Commenting on the subject, Molinier observed:

*The emergence of two large mass, coherent and disciplined parties with national support and alternating in power led in effect to a transfer to the*

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<sup>38</sup> Maitland *ibid* p. 98

<sup>39</sup> Maitland *Ibid* pp. 309-311. See also Casper, *ibid* (note 59, pp. 3-5) for a summarised account of the English struggles.

<sup>40</sup> "Tudor Parliaments" <<http://www.tudors.org/as-a2-level/tudor-parliaments/>> accessed 6 September 2017.

*Cabinet of what essential in the financial and other powers exercised previously by the House of Commons. Having stripped the monarchy of its financial prerogatives, Parliament was in turn stripped of its financial competences by the Cabinet. Today the House of Commons is hardly able to participate effectively in the determination of the budget.*<sup>41</sup>

Obviously, the National Assembly of Nigeria is working hard to protect its sovereignty and avoid the fate that befell the House of Commons. From the discussion so far, it is clear that disagreement between the executive and the legislature especially on monetary issues have always existed, but such conflicts should be viewed in a positive light with a view to deepen democracy. Therefore, the controversy surrounding the appropriation process in Nigeria is an incidence of democratic governance which should be harnessed to deepen the democratisation process in the country.<sup>42</sup>

The executive has always accused the legislature of tempering significantly with the budget laid before it by the President; an allegation the latter will usually make no effort to deny, but will rather adduce reasons why it did so. This has often led to strained relationships and flexing of muscles. In 2012, President Goodluck Jonathan is reported to have accused the National Assembly of altering the budget to the extent that it could not be recognised by the executive. In his words, “if you send your budget to the National Assembly and they tear it to pieces and package what they like, you start planning and managing the economy. We have challenges every year.”<sup>43</sup>In

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<sup>41</sup>Molinier, J. *Parliament's Financial Powers: A Comparison of France and Britain*, cited in Schick, A. 2002. *Can National Legislature Regain an Effective voice in Budget Policy?* Organisation for Economic Co-operation and Development (*OECD Journal on Budgeting*) <<https://www.oecd.org/gov/budgeting/43514045.pdf>> accessed 25 august 2017.

<sup>42</sup>Odunsi, W. 2017. *Masari Revealed How Obasanjo was saved from Impeachment*. Daily post Nigeria (24 August 2017) <<http://dailypost.ng/2017/08/24/masari-reveals-obasanjo-saved-impeachment/amp>> accessed 26 August 2017.

<sup>43</sup>Mohammed, A. 2017. *Separation of Powers and the Budgetary Process in Nigeria*. *The Nigerian Lawyer* (14 July 2017)

2013, the nation was thrown into a budget/constitutional crisis as issues of constituency projects and cuts in recurrent expenditure among others, generated so much controversy.<sup>44</sup>The position remains the same as similar complaints trailed the 2017 budget. The Vice-President (then Acting President),<sup>45</sup> Professor Yemi Osinbajo criticized the National Assembly for tinkering with the 2017 budget. He stated that the appropriation Bill sent to the National Assembly was an exclusive property of the executive, even though the legislature was free to allocate funds and possibly amend the document, such privileges do not empower the lawmakers to inject new clauses to the document.<sup>46</sup> He stated:

*Now, there are these two broad issues about who can do what. The first report is about who can do what. When you present budget to the National Assembly, it is presented as a Bill, an appropriation Bill. And secondly, do not introduce entirely new projects and all of that or modify projects. This is something that we experienced last year and this year again. It now leaves the question about who is supposed to do what.*<sup>47</sup>

Reacting to the statement by Professor Osinbajo, the National assembly insisted that it acted within the provisions of the

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<<http://thenigerialawyer.com/separation-of-powers-and-the-budgetary-process-in-nigeria/>> accessed 17 July 2017.

<sup>44</sup>Gbajabiamila, F. 2013. Constituency Projects, Budget Process and Related Matters – Role of Legislature and General Misconception. *Premium Times Nigeria* <<http://www.premiumtimesng.com/opinion/123687-constituency-projects-budget-process-and-related-matters-role-of-legislature-and-general-misconceptions-by-femi-gbajabiamila.html/amp>> accessed 4 September 2017.

<sup>45</sup>The President, Muhammadu Buhari travelled for medicals, but had transmitted powers to the Vice President by sending a letter to the National Assembly in compliance with section 145 of the Constitution.

<sup>46</sup>Onyekwere, J. and Azimazi, J. 2017. NASS has power to alter budget – Lawyers. *The guardian* (18 June 2017) <<https://guardian.ng/news/nass-has-powers-to-alter-budget-lawyers/amp/>> accessed 3 September 2017.

<sup>47</sup>Wakili, I. and Mudashir, I. 2017. Osinbajo: National Assembly has no powers to insert projects. *Daily Trust* (14 June 2017) <<https://www.dailytrust.com.ng/news/general/osinbajo-national-assembly-has-no-powers-to-insert-projects-in-budget/201701.html>> accessed 3 September 2017.



Constitution; saying, "... As you know, it is the constitutional right of the National Assembly to appropriate funds for the welfare and development of the country. You cannot take away this right."<sup>48</sup>

Indeed, even the 2018 Appropriation Bill suffered the same fate despite the fact that it was identified as the earliest to have been presented to the National Assembly for passage. It is on record that the Bill was presented in November, 2017 with the expectation that it will be passed at least, the first quarter of 2018 which never turned out to be, making it seem as the longest period that an Appropriation Bill has stayed with the National Assembly before passed in modern public finance management history.<sup>49</sup>

Opinions are divided on the extent of the powers of the National Assembly in the appropriation process. The absence of a specific provision in the Constitution has made some writers to argue that the National Assembly can only either approve or reject the budget, and nothing more.<sup>50</sup> Other commentators have opined that the National Assembly can only reduce the budget or make reallocations, but cannot introduce new projects or increase the estimates.<sup>51</sup> Yet others have shared the opinion that the legislature is at liberty to do as it pleases in reviewing the budget; it may increase or reduce estimates, and may even go as far as introducing new projects. According to Chief Mike Ozekhome,<sup>52</sup>

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<sup>48</sup> Daily Trust, *ibid*.

<sup>49</sup> See Onyekpere, E. 2018. The Insanity of Nigeria's Budgeting Process (Published May 14, 2018). [punchng.com/the-insanity-of-nigerias-budgeting-process/](http://punchng.com/the-insanity-of-nigerias-budgeting-process/) accessed on June 6<sup>th</sup>, 2018

<sup>50</sup> Mohammed (n 41 above); see also the statement of Konyinsola Ajayi quoted in Daily Times, *infra* (n 49).

<sup>51</sup> See statement credited to Femi Falana (SAN) in Nwabufo, F. 2017. Court never said you have power to increase budget, Falana tells lawmakers. *The Cable* (27 June 2017) <<https://www.thecable.ng/court-never-said-power-increase-budget-falana-tells-n-assembly>> accessed 4 September 2017.

<sup>52</sup> Cited in "Budget controversy: Invoke Rule 22 of "S" Court Order, SANs tell FG" Daily Times (28 June 2017) <<https://dailytimes.ng/news/budget-controversy-invoke-rule-22-scourt-order-sans-tell-fg/amp/>> accessed 25 August 2017. See also the statements credited to: Yusuf Ali (SAN), and Prof. Yemi Akinseye-George, SAN, in the article.

*It's so simple. The power of appropriation belongs to the Legislature, the NASS and not the Executive. The Legislature controls the purse. Sections 4, 80, 81, 82, 83, 84 and 162 of the 1999 Constitution (as amended) make it clear that the Executive cannot expend money without legislative approval. ... The NASS (National Assembly) can add to, subtract from, subsume in, multiply, remove from, alter, vary and amend budget proposals initiated by the Executive. As the representatives of the people, they know where the (shoe) pinches.*

It is important at this point to understand the range of influence the legislature has on the budget process, i.e., the types of parliamentary involvement in budget exercise. This is usually defined by the enabling law or constitution. Three varieties of approaches have been identified:<sup>53</sup>

- d. Budget writing legislatures – This does not imply that the appropriation Bill originates from the legislature; this is an executive function in almost every clan. It however means that the legislature can review and make significant inputs to the budget document presented to it by the executive. The U.S. Congress and state legislatures, and to a lesser extent, the Philippines and Nigeria are some countries falling under this category. In the state of Texas, for instance, the Legislative Budget Board actually prepares the general appropriations Bill, and it has the responsibility to guide, review and finalise agency strategic plans.<sup>54</sup> But in Maryland, the legislature can only cut or restrict funds in the budget, and cannot

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<sup>53</sup> Parliament of Inter-Parliamentary Sri Lanka Union General Report 2003. Parliament and the Budgetary Process Including from a Gender Perspective. Prepared by Anura Priyadharshana Yapa (rapporteur) <<http://www.ipu.org/splz-e/srilanka03.pdf>> accessed 22 July 2017.

<sup>54</sup> Johnson, J. and De Schryver, A. 2008. The Role of the Legislature in the Budget Process: Lessons from the Field. *Brookings Institution* <<https://www.brookings.edu/wp-content/uploads/2012/04/20080327.pdf>> accessed 4 September 2017.

- increase or transfer funds to other purposes. It can however, add to its own budget or the judiciary's.<sup>55</sup>
- e. Budget influencing legislature –This category has the authority to amend or reject executive budget. Only marginal changes can be made. Examples are: the Scandinavian parliaments, France, and Nicaragua.
  - f. Budget approving parliaments – Here, amendments are rare as parliament often pass the budget as presented. This is common with Westminster model parliaments. In such systems, parliamentary amendments adopted without the consent of the government are seen as a vote of no confidence passed on the government. Example is the United Kingdom and New Zealand. In Mozambique, if after debate, the Assembly of the Republic debates the budget and rejects the government programme and fail to pass the appropriation Bill, the President of the Republic may dissolve the Assembly and call for new general elections.<sup>56</sup>

Going by this categorization, as the author rightly observed Nigeria, to a lesser extent, falls into the first group. A cursory look at the constitution may seem like it did not provide for any limits to the powers of the national Assembly to review the budget. The provisions of sections 80 and 81 seem like a blank cheque issued to the legislature to do as they wish. The national assembly is the representative of the people and serves as the link between the public which generates the revenue, and the government which spends the money. So the National Assembly in considering the appropriation Bill must ensure that the document reflects the priorities of the nation. There is no moral or legal obligation on the National Assembly to approve the budget hook line and sinker as presented to it by the executive. Perhaps the 1798 speech of Albert Gallatin, a U.S. Congressman, in response to those who felt that Congress had

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<sup>55</sup> For details, see

<[http://mgaleg.maryland.gov/webmga/frmbgtfiscal.aspx?pid=bnfpage&stab=06&id=sk001\\_tab06&tab=subject4](http://mgaleg.maryland.gov/webmga/frmbgtfiscal.aspx?pid=bnfpage&stab=06&id=sk001_tab06&tab=subject4)>

<sup>56</sup> Johnson and De Schryver (n 52).

an obligation to support financially the diplomatic establishment that the President thought was necessary, will find some relevance here. He observed:

*This doctrine is as novel as it is absurd. We have always been taught to believe, that in all mixed governments, and especially our own, the different departments mutually operated as checks one upon the other. It is a principle incident to the very nature of those governments; it is a principle which flows from the distribution and separation of legislative and executive powers, by which the same act, in many instances, instead of belonging exclusively to either, falls under the discretionary and partial authority of both; ... it is a principle of the Constitution under which we now act. ... Although there is no clause which directs that Congress shall be bound to appropriate money in order to carry into effect any of the executive powers, some gentlemen, recurring to metaphysical subtleties, and abandoning the literal and plain sense of the Constitution, say that ... we ... are under a moral obligation in this instance to grant the money. It is evident that where the Constitution has lodged the power, there exists the right of acting, and the right of discretion.<sup>57</sup>*

A joint reading of Sections 81(1) and 59 of the Constitution will leave no doubt in the mind of the reader that the framers of the Constitution did not intend for the Legislature to be a rubber stamp parliament, where every monetary policy or proposal of the government is allowed to pass without scrutiny. The National Assembly is not like the Parliament under the Tudors, where “it is not so much that the king will tax without parliamentary consent, but that Parliament will consent to just whatever the king wants and will condone his illegal acts.”<sup>58</sup> The National Assembly is an independent arm of government with a mind of its own. But this independence must be asserted within the confines of the law.

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<sup>57</sup> Cited in Casper (n 30) 19.

<sup>58</sup> Maitland (n 35) 180.

Hence, Section 81 gives the President the exclusive right to cause the budget to be prepared with the heads of the expenditure contained in the budget estimates included as appropriation Bill, and have it laid before the National Assembly. Section 59 contains the actions expected of the National Assembly when presented with a money Bill; with an internal mechanism for resolving any differences that may arise between the two Chambers. When both Chambers, after going through the appropriation process, come to an agreement, and the President fails to assent to the Bill, subsection 4 gives the National Assembly power to override the President veto and sign the Bill into law. This is no doubt; a great responsibility placed on the National Assembly, and reemphasizes the Legislature's control over the national purse.

From the Constitution, therefore, it is clear that the drafters envisaged that in considering the proposed estimates of expenditure laid before it by the President, the National Assembly may have to effect some amendments, thereby tinkering with the original document presented to it. Otherwise, how do you explain the power granted to the National Assembly to override the President's veto? The Constitution may not have expressly used words like amend, modify, review, etc., but that is not reason enough not to consider the spirit of the law. Besides the traditional canons of interpretation, the purposive approach is now enjoying recognition by the Courts in Nigeria.<sup>59</sup>

The Fiscal Responsibility Act (FRA) is another statute that regulates the budgetary process in Nigeria. Section 11(1) of the Act provides that "the Federal government after consultation with the states shall ... cause to be prepared and laid before the National Assembly, for their consideration a Medium-Term Expenditure Framework for the next three financial years; ...."<sup>60</sup> Subsection (2) gives the National

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<sup>59</sup>*NafiuRabiu v The State* (1981) 2 NCLR 293, 326: per Udoma JSC; *Amaechi v INEC* (2008) 5 NWLR (pt. 1080) 227 at 451; and *Attorney-General of the Federation v Abubakar* (2007) 10 NWLR (pt. 1041) 171-172.

<sup>60</sup> Medium-Term Expenditure Framework (MTEF) in Nigeria is usually prepared every year to cover a three year period. As observed by Interparliamentary Union (n 50), the development of MTEFs is useful in

Assembly powers to modify the MTEF. It provides: “the framework so laid shall be considered for approval with such modifications, if any, as the National Assembly finds appropriate by a resolution of each House of the National Assembly.

The import of this Section can only be appreciated when we have a fair understanding of the role of the MTEF in the entire budget process. Section 18 of the FRA provides an explanation:

*Notwithstanding anything to the contrary contained in this Act or any 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 Constitution. (2) The sectorial 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.*

Looking at these provisions of the FRA, it is clear that the content of the Budget draw its validity from the MTEF. The Framework is usually presented before the annual budget, and the National Assembly can make amendments to the framework as it deems fit. Looking at the relationship of the budget to the MTEF, it is safe to assert that the National Assembly can make amendments to the budget; if it can amend or modify the MTEF from where the budget is drawn. In fact, noncompliance with the MTEF’s developmental priorities is enough reason for the National Assembly to reject the budget.

This brings us to the issue of the extent of amendments or modifications permitted by law to be made by the National

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that they provide an indication of government’s plans priorities over a longer period of time than the one covered by the annual budget. They therefore allow for adequate debate on these plans before they are translated into budgetary allocations. MTEFs make it possible to gradually and smoothly shift some budgetary allocations to other sectors and set out new priorities on a medium-term basis. These approach offer greater flexibility than incremental budgeting practice.

Assembly. Going back to the provisions of sections 80, 81, and 59, of the Constitution, we are of the view that the National Assembly can pass the appropriation Bill as received, or reject it altogether; it can increase or reduce the estimates; it can reallocate funds from one item to another contained in the budget; it can even delete items it considers unnecessary from the budget. However, we do not see enough reason to agree that the National Assembly can unilaterally introduce new projects into the budget. This is because by the provision of section 81(1), only the President can present estimates of expenditure before the National Assembly; it is the estimates as presented by the President that the National Assembly will consider. So if the National Assembly introduces new items to the budget and allocates funds to such, can it be said, with respect to the newly introduced items, that the National Assembly was considering estimates laid before it by the President? Considering that the President never made any estimates with respect to those items. This will amount to a usurpation of executive powers.

In *Falana v. The President and 3 Ors*,<sup>61</sup> Falana asked the Court to determine, among others, whether the National Assembly could 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 Executive. Though the Court described the learned Silk as a “meddlesome interloper”, Kolawole, J, held thus:

*The National Assembly was not created by drafters of the Constitution and imbued with the powers to receive “budget estimates” which the first 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 Parliament is to enable it, being 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.*

The Legislature takes this to mean a judicial recognition of its powers to do as it pleases with the annual budget, and expressed displeasure over the comments credited to the Acting

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<sup>61</sup>*Falana's case* (n 32).

President at the time; saying it will not give up any of its constitutional powers to the executive.<sup>62</sup> Falana has however, insisted that the interpretation of the judgment by the Legislature is misleading. He observed:

*No doubt, the learned trial judge said that the National Assembly is not a rubber stamp parliament. The incontestable statement has since been twisted to give the very erroneous impression that the power of the National Assembly to increase the budget has been judicially recognised. With respect, the summary of the decision of the Court by the National Assembly is grossly misleading. ... The learned trial judge never said that the National Assembly has the power to increase any budget proposal submitted to it by the President. On the contrary, the Federal High Court made it categorically clear that the National Assembly lacks the legislative powers to prepare “budget estimates” for the President or “disregard the budget proposals laid before it and substitute it with its own estimates.”<sup>63</sup>*

Obviously, a clearer and more definite pronouncement by the judiciary is required. But just as the Constitution did not “imbued” the National Assembly with powers to receive the budget “as a rubber stamp parliament”, it did not also grant the President the exclusive right to “cause to be prepared.... and lay before the National assembly, estimates of expenditure for the next following financial year ...” as a mere formality. It is a duty exclusive to the President. Even though the budget is only a request to the National Assembly, “the power to formulate and submit the budget is a vital tool in the President’s direction of the executive branch and of national policy.”<sup>64</sup> So whatever is

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<sup>62</sup> See Umoru, H. and Ovuakporie, E. 2017. N-Assembly, Osinbajo clash over 2017 Budget. *Vanguard* (16 June 2017) <<https://www.vanguardngr.com/2017/06/n-assembly-osinbajo-clash-over-2017-budget/>> accessed 5 September 2017.

<sup>63</sup> See Falana, in Nwabufo (n 48 above).

<sup>64</sup> Congressional Research Service (CRS) 2012. Introduction to the Federal Budget Process. *CRS Report* <<https://fas.org/sgp/crs/misc/98-721.pdf>> accessed 31 August 2017.



not caused to be prepared by the President and laid before the National Assembly should not come under consideration when discussing the budget in the National Assembly. Otherwise, we foresee a situation where the National Assembly will receive proposed estimates from the President, set it aside, and present its own entirely new version for the President's signature. After all, it has the power to override the President's veto. This is clearly not the intention of the drafters of the constitution. As observed by Junaid Mohammed,

*The National Assembly does not have exclusive powers over the budget, but it has the powers to be involved in the budgeting process. The power to initiate the process in my view should belong and reside with the executive branch, while the power to oversee the budget; to see that the figures are correct, the priorities are right and in the national interest belongs to the National Assembly. ... The NASS cannot introduce projects into the budget. Doing so is akin to usurping the powers of the executive.*<sup>65</sup>

This does not in any way, undermine the supremacy of the Parliament or intend to take away the Legislature's control or power of the purse. Rather, it is an attempt to reveal the thin line between executive and legislative powers in this regard. The Legislature still controls the nation's resources, because unless it permits, the Executive cannot generally withdraw from any public fund of the Federation. But a proposal to withdraw funds must come from the executive; it is not in the place of the legislature to initiate the process. Were this the case, then it can be argued that the legislature can simply order the executive to make withdrawals for just any purpose, even where no request has been received from the executive for that purpose. The current situation of giving the legislature the power of the purse, and the executive the power to request and make withdrawals from the purse subject to legislative approval is a mechanism to ensure checks and balance and prevent abuse by one arm of the government. Perhaps, the type of

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<sup>65</sup> See statement accredited to Junaid Mohammed, in Onyekwere and Jimoh (n 44).

parliamentary control for which this system is designed ... is quite different from the control which the legislators really want.<sup>66</sup>

Genuine concerns have been expressed by members of Parliament about the imbalances usually discovered in the budget, and the need for them as representatives of the people to attract “federal presence” to their constituencies. Sometimes, it is usually in a move to balance the budget and attract constituency projects that new items are introduced. According to Gbajabiamila,

*... beyond express powers, there are implied powers incidental to the expressed powers, and impute into the nation's budget in a representative capacity by way of constituency projects is one such incidental power. ... If in a budget proposal the legislature finds that the nation's material resources and distribution are skewed to a particular section of our vast country and to the disadvantage of maybe those he represents. Is he supposed to fold his arms or is he supposed to go beg the executive for inclusion or to 'carry his people along'. Is that how he is meant to represent his people or protect the Constitution? I think not.<sup>67</sup>*

Genuine as this may sound, arrogating powers to itself is certainly not the way to go. Dialogue and consultation seem more appropriate tools for stirring the ship of democracy. We cannot agree more with Hon. Gbajabiamila<sup>68</sup> that the role of the legislature goes far beyond law making. The legislators are the true representatives of the people and are expected to be closer to the grass roots. So it is important that the legislature make inputs to the annual budget. However, as it stands, such inputs involving the introduction of new projects has to be done at the formulation stage before the budget is laid before parliament. Also as rightly observed by Gbajabiamila, a point recently

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<sup>66</sup>Onida, V. The Historical and Constitutional Foundations of the Budget System in Italy. Cited in Schick (n 39).

<sup>67</sup>Gbajabiamila, (n 42).

<sup>68</sup>Gbajabiamila, *ibid*

reaffirmed,<sup>69</sup> sometimes, while considering the appropriation Bill, Parliament will find that projects are concentrated in one section of the country to the disadvantage of others. So there is the need to make inputs in order to arrive at a balance budget. Hence, I feel the door of consultation must remain open beyond the formulation stage. Otherwise, the legislature should reject the budget with the areas desirous of amendments clearly spelt out. This therefore, calls for a reform of the budget process to allow for greater participation. This is further discussed in the next section.

#### **4. The way forward:**

##### **a. An organic budget law**

Perhaps, one way to ensure that the budgetary process in Nigeria is well regulated is by adopting an organic budget law to regulate the principles governing the preparation, proposal, and approval of the budget, and responsibilities for its implementation. An organic budget law is described as “a law specifying the schedule and procedures by which the budget should be prepared, approved, executed, accounted for, and final accounts submitted for approval.”<sup>70</sup> It is refreshing to know that the country is in the process of adopting such a law.<sup>71</sup> It is hoped that upon enactment, the law will address some of the controversies plaguing our budgetary processes today.

##### **b. Need for consultations in drafting and enactment of budget legislation**

The doctrine of separation of powers upon which our government is based does not place one department over the other. Rather, it is three equal departments of state mutually

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<sup>69</sup> Panel discussion “Legislation and national planning” Nigerian Bar Association Annual Conference, (23 August 2017) Held at the Landmark Event Centre, Lagos.

<sup>70</sup>Edeh, H. and Egboboh, C. 2017. FG Mulls “Organic Budget Law” to Address Delayed Budgeting Processes. *Business Day* (6 June 2017) <<http://www.businessdayonline.com/fg-mulls-organic-budget-law-address-delayed-budgeting-processes/>> accessed 11 September 2017.

<sup>71</sup>*Ibid.*

working together and serving as checks one upon the others for the smooth governance of the country. The departments referred to here are the Legislature, the Executive, and the Judiciary. In order to foster a harmonious relationship between these departments, the role of consultation and dialogue cannot be over emphasized. The face up between the Executive and the Legislature can be managed through proper consultation prior to the presentation of the budget before the National Assembly. Considering the strategic role of the legislature in our governance structure, it is not wise to let the body in on the plans of the government for an entire year only upon the presentation of the budget. Proper mechanism should be put in place to allow for dialogue and contribution by the legislature at the budget formulation stage. Writing on the need to improve legislative participation in the budgetary process, Galambi observed:

*Seeing that over time, budget proposals prepared by a unit in the executive have gradually become standards against which the performance of legislators are measured, it is only natural for the legislature to begin to seek relevance at the formulation of the budget. As the representatives of the people the legislators are always interested that the budget optimally matches the needs of their people on whose behalf they are in government.*<sup>72</sup>

This objective in the minds of all serious minded legislator is better captured at the budget preparation stage; hence the need for an inclusive budgeting process. How can a legislator representing a constituency explain his inability to attract developmental projects to the constituency he represents? Every politician generally looks forward to being re-elected, so constituency projects are as important to the legislators as performance is to the executive. Provisions should be made for constituency projects as this is one way the immediate constituency can feel the impact of their elected

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<sup>72</sup>Galambi, Y. 2011. Improving Legislative Participation in the Budget Process in Nigeria. <<http://www.gamji.com/article9000/NEWS9352.htm>> accessed 11 September 2017.

representatives. Mechanisms should however, be put in place to ensure proper execution of such projects to avoid abuse.

The government should also keep the legislature abreast of its fiscal or economic plans for the country. As Honourable Chidoka<sup>73</sup> noted, most at times, the legislature and the general public do not understand the economic plan of the government. He therefore calls for greater synergy and pre-budget interface between the executive and the legislature. How can it be explained that the legislature who is supposed to authorize withdrawal from public purse do not understand the rationale behind the proposed withdrawal? It is important that all legislation including financial legislation back national planning; this can only be possible if the lawmakers understand the economic plans of the government.

In creating a favourable platform for consultation, we can borrow the example of the Republic of the Philippines which in 1992, formulated the Legislative-Executive Development Advisory Council (LEDAC) to serve as a consultative and advisory body to the President on certain projects towards the realisation of the national economic plans. The body is comprised of selected members of the Executive, the Legislature, and representatives from the Local Government Units, youth sector, and private sector. It serves as a platform for consultation and discussion on matter of national importance. When representatives from the legislature understand a given plan of government, they can properly enlighten other members and this will make it easy for supporting legislation to be approved.<sup>74</sup> Such a platform can be used to negotiate the annual budget and agree on a template acceptable to all. Again, the National Assembly Budget and Research Office (NABRO) should be strengthened and expanded in line with its mandate to provide professional advice to the legislators on fiscal matters. This will ensure that legislator's make informed inputs when considering the appropriation Bill.

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<sup>73</sup>ObinnaChidoka, Panel Discussion (note 67 above).

<sup>74</sup> For details on LEDAC, visit <<http://ledac.neda.gov.ph/about-ledac/>>

**c. Clearly worded provisions of law**

Communication and clarity are some of the basic principles of legislative drafting. The provisions of legislation need be clear such that the intention of the lawmakers is not in doubt. This means that the provisions of the Constitution relating to the powers of the President vis-à-vis the powers of the legislature need to be reviewed. The current debate on “who has the power to do what” is an indication that the relevant provisions admits of ambiguity.

**d. Use the Court**

The Judiciary is the third arm of government with the primary responsibility of interpreting the provisions of the law; hence it is said that the Judiciary holds the power of the pen. The Executive and the Legislature should not hesitate to approach the Court for an interpretation of a controversial provision of law affecting the smooth working of government. Such action should not be viewed as confrontational, but a move in the right direction to strengthen our not so nascent democracy.

Concerned private citizens are not able to institute action seeking interpretation of the law with respect to executive-legislative relationship. In Falana’s case, the Court questions his locus to institute the action seeking judicial pronouncement on the issues before the court. But the law has made it easier for either the Executive or Legislature to seek such interpretation without having to go through the lower courts.<sup>75</sup>

The Executive should therefore, approach the Supreme Court for an interpretation of the extent of the power of appropriation conferred on the National Assembly. This will deepen the roots of our democracy, enrich our jurisprudence, reduce tension, and enhance cooperation between the two arms of government on the one hand, and enhance the understanding of the general public on the budgetary process on the other hand.

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<sup>75</sup> See: Section 1 of the Supreme Court (Additional Original Jurisdiction) Act, 2002, Cap. S16 L.F.N. 2004; and Rule 22 of the Supreme Court Order.

## 5. Conclusion

When we finally take steps to reform the budgeting process, we should bear the advice of Blondal, Kraan, and Ruffner in mind: "... there are lessons for countries wishing to reform their system that the reforms take time and that the reforms must be formal so that they outlast the current political climate."<sup>76</sup> Also, Senator Akande<sup>77</sup> advised that both the legislature and executive must put national interest first, and do nothing out of selfish ambition. The law provides limits for each arm of government; each should endeavor that it stays within limits. The budgetary process in Nigeria is in dire need of reforms and this must be done for the annual budget to assume its position as a socio-economic document impacting the lives of ordinary Nigerians. As Galambi observed:

*... The budget will be richer and more down to earth if wider consultations are held. Opinions of civil society and community based organisations will go a long way in improving the service delivery component of the budget and enhance debate over policy matters. It will even be better, much better if legislators are made privy to the budget making process. Apart from enhancing easier passage in the National Assembly, the legislators will enrich the process with their knowledge of their constituencies.*<sup>78</sup>

This work is not conclusive on the matter, but it is hoped that this will stir up more fruitful debates on the subject and instigate positive steps towards the reform of the budget process in Nigeria. A judicial interpretation by the Apex Court is necessary to lay the matter to rest. The resources of a country are not unlimited, but the demands of the public are insatiable; thus there is need for consultation and compromise at all levels of decision making.

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<sup>76</sup>Blondal, J. Dirk-Jan, K. and Ruffner, M. 2003. Budgeting in the United States.3(2) *OECD Journal on Budgeting* 33.

<sup>77</sup>Mulikat Akande, Panel Discussion (note 67 above).

<sup>78</sup>Galambi (n 70).