

Role of Legislatures in Budget Process in Nigeria: The Legal Implications of Budget Padding

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Abstract

Nigeria is among the nations that stricto sensu applies the principle of separation of powers in regulating the affairs of the nation. The said principle signifies the practice of splitting the powers of government among the different organs of government. A government that operates the principle of separation of powers assigns different political and legal duties to the executive, legislative and judicial organs of government. Against this background, the 1999 Constitution of Nigeria (as amended) makes it expressly clear that, the executive organ has the power to administer and enforce the laws, while the legislature has the power to make laws and the judiciary on the other hand, tries cases brought before the courts and interprets the laws. The Budget is an estimate of income and expenditure for a period of time and thus, that is what the Budget of Nigeria entails. The preparation and sending of the budget to the legislature for scrutiny and approval is the sole duty of the executive organ. Consequently, the main objective of this study is to determine whether the legislature can after receiving a budget from the executive, rewrite and incorporate some items that were not sent by the executive? Therefore, this study employs an analytical method by looking at the Constitution and other relevant subsidiary laws in determining whether the legislature has such powers in the Nigerian Legal System. The finding of this study reveals that both the Constitution and the FRA has not authorized the National Assembly members to rewrite the national budget or insert some expenditure into the budget and appropriate recommendations were made.

Keywords: Role of Legislature, Budget, Padding, Separation of Powers, Legal Implication

1.1 Introduction

The word budget is the most fundamental instrument for economic management because it is an annual, financial and economic plan for resource mobilisation and allocation, and the vehicle that facilitate in attaining governmental policies and public goals.¹ As democratically elected officials, legislators not only make laws and

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represent their political parties and constituencies; they also make critical inputs into the budget process.² Their inputs are pivotal as they are meant to strengthen the budget office's role (planning, allocation, execution, evaluation) and, as part of their oversight functions to ensure the budget process outcomes align with the anticipated objectives.³ Legislators' input confers ownership and responsibility on the process because, as custodians of the nation's commonwealth, they remain answerable to their local constituencies and have the constitutional mandate to ensure the judicious deployment of available resources at minimum cost.⁴

The National Assembly main roles are to review and debate the government's draft ex-ante budget (including its revenue estimates and spending plans) and to authorize spending to implement the annual budget plan. The National Assembly also reviews budget execution and, it formally approves and discharges the government after annual budget implementation.⁵ It also involved in pre-budget debates; review of the government's medium-term budget strategy; approval of supplementary budgets that modify the initial budget adopted by the legislature; and ensure strict compliance of the budget to the provisions of the law by checkmating the powers of the executive and removing excesses and arbitrariness in the budget.⁶

On the contrary, over the years, the National Assembly have abused these processes by engaging in budget padding hence, making the proposal a little higher than the one submitted by the Executive for approval. This paper therefore seeks to enquire on the concept of Nigerian system of government, the history of budget padding and to determine whether the National Assembly has the power to rewrite or insert some expenditure into the budget. In doing so, this study employs a doctrinal legal research as a methodology and examines the history of governance in Nigeria; identifies the roles of the legislature in the Budget Process; discusses the Budget process and Budget Padding in Nigeria and lastly, determines whether the Legislature can rewrite or insert certain expenditure in the Budget submitted to it for approval.

¹ Dahiru, M. Issues in the padding and un-padding of budget 2016. Premium Times. Accessed from <https://opinion.premiumtimesng.com> 10th February, 2021 (2016).

² Ariyo, A. Strategies for civil society participation in national budgeting. A paper presented at a Capacity Building Workshop organised by Socio Economic Rights Initiative (2000).

³ DeLee, D. 'What is padding the budget? Bizfluent. accessed from <https://bizfluent.com/info-7751901-padding-budget.html> (2017)

⁴ Chiamogu, Peter Amobi, Budget Padding and Appropriation in Nigeria: An Appraisal of Legislative Powers in an Evolving Democracy (2018).

⁵ Kraft, E. M., & Furlong, S.R. Public policy: politics, analysis, and alternatives, 2nd Edition. Washington, D.C: CQ ; London : Eurospan (2007).

⁶ 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 Vol. 57 (2017).

1.2 The System of Governance in Nigeria

Nigeria is a Federal Republic consists of 36 States, and a Capital Territory, with an elected President and a Bi-cameral Legislature. It operates the Presidential system of Government with three distinct but complementary arms namely the Executive, the Legislature and the Judiciary, each acting as a check on the other two.⁷ The Executive arm of Government, at the Federal level, consists of the President, the Vice-president and other members of the Federal Executive Council, while at the State level; it is made up of the Governor, the Deputy Governor and other members of the State Executive Council.⁸

The Legislature is equally found at the Federal and State levels. The Federal Legislature comprises of 109 Senators and 360 members of the House of Representatives. The two, combined, is known as the National Assembly (the equivalent of the American Congress). At the State level, the Legislature is known as the House of Assembly.⁹ The modes of exercising federal legislative powers are contained in Section 58 of the 1999 Nigerian Constitution (as amended)

The President, Governor, their Deputies, as well as members of the Legislature at both Federal and State levels are elected, under the present 1999 Constitution, for four years, renewable only once for the President and Vice President, Governors and their Deputies. The Senate President is the Head of the Federal Legislature.¹⁰

The Judiciary interprets the laws and adjudicates in conflicts between the Executive and the Legislature. It carries out these functions through the various established courts. The Supreme Court is the highest court of the land, followed by the Court of Appeal, the High Court, Magistrate Court, Area Court and Customary Court.¹¹

That under the 1999 Constitution, executive power is vested in a President who serves as both the head of state and the chief executive, is directly elected to a four-year term, and nominates the Vice President and members of the cabinet.¹² The constitution provides for a bicameral National Assembly, which consists of the House of Representatives and the Senate. Each State of the federation elects those to

⁷ Burhead, J. Government Budgeting, John Willy & Sons Inc, New York (2018)

⁸ Anthony, R. N., & Govindarajan, V. Management control systems, McGraw-Hill, Boston (2004).

⁹ Aziken, E. Budget Padding: The road to constitutional dictatorship accessed from <http://www.vanguardngr.com/2016/07/budget-padding-road-constitutional-dictatorship/> 13th February, 2021 (2016).

¹⁰ Coleman, P. T. Reconstructing ripeness I: A study of constructive engagement in protracted social conflicts. *Conflict Resolution Quarterly*, 26 (1), 3 - 42. (2008), See Section 50 of the 1999 Nigerian Constitution as amended.

¹¹ Kraft, E. M., & Furlong, S.R. Public policy: politics, analysis, and alternatives, 2nd Edition. Washington, D.C. CQ; London: Eurospan (2007). See Section 230-296 of the 1999 Nigerian Constitution (as amended)

¹² See Sections 135 and 141 of the 1999 Nigerian Constitution (as amended) and Gbajabiamila, F. Budget and budgeting process in National Assembly, (2014).

serve as members of the House of Representatives for four-year terms; members of the Senate three from each State and one from the Federal Capital Territory also are elected to four-year terms.¹³

Nigeria is a federal democratic republic with a presidential system of government. In a federal state, the primary political subdivision has a constitutional character independent of the central government. In the case of Nigeria, there are the 36 States. This is in contrast to a Unitary State in which the political subdivisions are created by, and beholden to the center.

In a presidential system of government, the executive is headed by a president who is both Chief of State and head of government.¹⁴ The president is independent of the legislature and is often elected through universal suffrage, thereby giving him a political mandate to govern directly and decisively. This is in contrast to a parliamentary system of governance in which the roles of head of state and chief of government are bifurcated between a president or monarch, and a prime minister, the latter being a member of the legislative body.¹⁵

In terms of its democratic efficiency, there is general agreement that Nigeria sits at a midpoint between a transitional democracy and a consolidated democracy. In a consolidated democracy, the democratic institutions are on a solid enough foundation that there is minimal chance of democratic collapse.¹⁶

Nigeria is a federal republic whose government operates as a representative democracy. The current form of government was established in 1999, after the end of years of military rule. Much like in the United States of America, the president of Nigeria is the head of the executive branch. The government also features a bicameral legislature and a judiciary branch.¹⁷

The government and the president of Nigeria are vulnerable to corruption, just like members of any government. All in all, Nigeria has a relatively stable government that works to govern the country according to its Constitution. In fact, the

¹³ 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* Vol. 57 (2017).

¹⁴ Masoud, S., & Thomas, L. Institutional Theory. In: Donsbach, Wolfgang, (ed.) *The International Encyclopedia of Communication*. Oxford: Blackwell Publishers (2008).

¹⁵ Dogara, Y. (2016). Legislative perspectives on the budget process. An Address delivered at Order Paper Colloquium on Budget Matters at the Sheraton Hotels and Towers, Abuja on September 26. Accessed from <http://yakubudogara.com.ng/legislative-perspectives-on-the-budget-process-address-delivered-at-orderpaperng-colloquium>, 12 February, 2021

¹⁶ OECD The legal frameworks for budget systems: An international comparison. *OECD Journal on Budgeting*, Special Issue 4(3) (2004).

¹⁷ Lead capitalng Budget Process in Nigeria - Why do we have long delays in passing budgets? Pt 1. Retrieved from <https://leadcapitalng.wordpress.com/2012/10/08/budget-process-in-nigeria-why-do-we-have-long-delays-in-passing-budgets-pt-1/> 10th February, 2021 (2012).

constitution of Nigeria has explicit clauses built into it to root out corruption. Clearly, this does not always get enforced.¹⁸

Still, as a democracy, Nigeria holds elections to decide who holds office in government. Unfortunately, many elections in the past two decades have been the cause of violent events that put into doubt how fair and free the democracy really is. Patronage influencing and bribery are also frequent concerns.¹⁹

In the end, though, it is safe to assume that Nigeria is still functioning mostly along the lines of its constitutional model.²⁰ The different bodies of government are still carrying out their basic functions. Even with threats of violence and corruption, the members of the government are still part of a functioning governmental body. Just how truly democratic the government is, and how well it represents the will of the Nigerian people, is less clear.²¹

Having examined the system of governance in Nigeria, the subsequent heading examines the legislative functions relating to budget processes.

1.3 The Roles of Legislature in Budget Processes

Nigeria's National Assembly is a budget-making legislature; its power is conferred on it by the 1999 Constitution as codified in Sections 80–84 and Federal Responsibility Act (FRA) 2007. The National Assembly exercises control over funds of the federation. Specifically, Section 80(4) of the 1999 Constitution states that '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 and section 81(1) provides the time frame for submitting the budget proposal for consideration.²²

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.²³

That Section 80–84 of the 1999 Nigerian Constitution confers 'appropriation powers' on Parliament as well as its responsibilities over the national purse. The formulation and planning powers are drawn from FRA 2007 as per Section 18 which clearly stipulates that the Medium Term Expenditure Frameworks (MTEF) should form the

¹⁸ Dahiru, M. Issues in the padding and un-padding of budget 2016. Premium Times (2016)

¹⁹ 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* Vol. 57 (2017).

²⁰ Kpedor, G. Budgeting, Budgetary Control and Performance Evaluation (2012).

²¹ Ariyo, A. Strategies for civil society participation in national budgeting. A paper presented at a Capacity Building Workshop organised by Socio Economic Rights Initiative (2000).

²² Gbajabiamila, F. Budget and budgeting process in National Assembly, (2014).

²³ Civil Society Legislative Advocacy Centre (CISLAC) The legislature and budget process in Nigeria. accessed from <http://cislacnigeria.net/index.php/2007/04/10/the-legislature-and-budget-process-in-nigeria/> 9th February, 2021 (2007).

basis for preparing the estimates of revenue and expenditure in the national budget.²⁴ In both cases, the Senate and the House of Representatives must pass the same version of the budget (or MTEF) for it to qualify for the president's assent. In the event of a disagreement between the two houses of the National Assembly, the Joint Committee on Appropriations will refer both versions of the passed bills (from the two houses) to the Conference Committee for harmonization and concurrence.²⁵ This committee is usually made up of an equal number of Senators and members of the House of Representatives.

Thus, the 1999 Nigerian Constitution specifies the roles and responsibilities regarding the submission, adoption and approval of the Appropriations Bill.²⁶ The 1999 Constitution also provides that, upon passage of the Appropriations Bill, the National Assembly should send the bill to the President for assent within 30 days,²⁷ failing which the National Assembly may veto the bill.²⁸ Section 82 of the 1999 Nigerian Constitution authorises spending from the Consolidated Revenue Fund for up to six months in the new year, pending the passage of the Appropriations Bill. Such expenditures are termed 'provisional general warrants'.²⁹

That within the framework of legislative budget oversight in" Nigeria, the key budget oversight powers and responsibilities are drawn from Sections 88 and 89 of the 1999 Constitution as well as Section 30(1) of the FRA 2007. Specifically, Section 88(1) stipulates that, subject to other provisions of the 1999 Nigerian Constitution, each house of the National Assembly shall have the power, by passing resolutions, to direct, or cause to be directed, an investigation into any matter or thing with respect to which it has power to make laws, and into the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of, or responsibility, for executing or administering laws enacted by the National Assembly and for disbursing or administering moneys appropriated, or to be appropriated, by the National Assembly.³⁰

Further, Section 88(2)(b) of the 1999 Nigerian Constitution stipulates that the powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to expose corruption, inefficiency or

²⁴ Ozekhome, M. Powers, limits, extent of appropriation in budget matters by the NASS vis-a-vis the role of the President (Part 1). *The Nigerian Lawyer* (2016)

²⁵ Suleiman, E.S. *The Nigerian budget process. Understanding monetary policy series No. 56.* Central Bank of Nigeria (2015).

²⁶ Point Blank News, Budget and budgeting process in National Assembly. *Point Blank News* (2019)

²⁷ See Sections 58(4) and 100(4) of the 1999 Nigerian Constitution

²⁸ Section 59 of the 1999 Nigerian Constitution

²⁹ Scott, W. R. *Institutional theory.* *Encyclopedia of Social Theory*, George Ritzer, ed. Thousand Oaks, CA: Sage. Pp. 408-14 (2004).

³⁰ Vintagesam, *Nigeria budget and budgeting processes.* *Opinion Nigeria* (2014)

waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.³¹

1.4 Budget Process in Nigeria

A budget is the sum of money allocated for a particular purpose and the summary of intended expenditures along with proposals for how to meet them. Usually, the government councils translate their services through budget as it has to do with financial plan or estimate of proposed income and expenditure for a particular period normally a year.³² It is the translation in financial terms of government policies; a fiscal estimation of what government plans to spend, where it plans to spend it on and how it intends to source the funds. Although, the success or failure of any government is always measured on the basis of the provision or neglect of the welfare of the people, the principles adopted in budget preparation is one that is aimed at making the entire process transparent and participatory.³³ Budget is an important tool in governance and most relevant to the economic policy.³⁴ It is the second most important document after the Constitution in any nation. It signifies that budget is an expression of the Constitution and statutes of government which endow the executive and legislature with designated financial and managerial responsibilities.³⁵

Budget undergoes some processes before it becomes both a law and an economic tool. Budgetary process involves all centers, programmes and administrative units of an entity in the development of periodic budget. The process involves all the executive and legislative processes, that is, collection of estimates from the various government departments to the defence before the various committees of the legislatures and debates in the floor of the houses, the passage into law and the final implementation and monitoring.³⁶

According to Omolehinwa et al, four basic stages of budgeting in Nigeria are as follows³⁷:

1. Formulation or preparation stage;

³¹ Suleiman, E.S. The Nigerian budget process. Understanding monetary policy series No. 56. Central Bank of Nigeria (2015).

³² Chiamogu, Peter Amobi, Budget Padding and Appropriation in Nigeria: An Appraisal of Legislative Powers in an Evolving Democracy (2018).

³³ Gbajabiamila, F. Budget and budgeting process in National Assembly, (2014).

³⁴ 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 Vol. 57 (2017).

³⁵ Ariyo, A. Strategies for civil society participation in national budgeting. A paper presented at a Capacity Building Workshop organised by Socio Economic Rights Initiative (2000).

³⁶ Gbajabiamila, F. Budget and budgeting process in National Assembly, (2014).

³⁷ Omolehinwa, E., & Naiyeju, J.K . Government Accounting in Nigeria: An IPSAS Approach, Pumark Publications, Lagods (2015).

2. Approval stage where the Appropriation bill is sent to the National Assembly;
3. The implementation stage where the revenues due to the government are collected and the money approved in the budget is spent to carry out government plans as approved by Appropriation Act;³⁸
4. Budget monitoring and valuation stage.

In some States, preparation and authority is not always given to Governors while some have responsibility for preparation and submission, some share budget making authority with other elected administrative officers, civil servants, political appointees, legislative leaders, or some combination of these officers.³⁹ At the federal government level, preparations start from large agencies. The agencies begin by assessing their programmes and considering which programme requires revision and whether new programmes should be recommended. At same time, estimates are made by the President's staff regarding anticipated economic trends in order to determine available revenue under existing tax legislation.⁴⁰ The budget approval in the public sector (Government) occurs at three stages namely ministerial approval, executive approval and legislative approval.⁴¹ The preparation of budget phase commences five months before the beginning of the fiscal year. Guidelines are issued from the ministry of budget and planning in a form of circular.⁴² When the circular demanding the budget estimates to prepare is received by each ministry and department, a departmental committee of budget estimate is set up by each ministry and extra ministerial department. The committee is headed by the ministerial head of budget and personnel. It has its function as consideration and reconciliation of the budget proposals submitted by various departmental branches, division and units of the ministry.⁴³

For the purpose of this paper, we shall examine the following stages:

1. Ministerial approval stage
2. Executive council approval stage; and
3. Legislative approval stage
- 4.

³⁸ Suleiman, E.S. (2015). The Nigerian budget process. Understanding monetary policy series No. 56. Central Bank of Nigeria

³⁹ Anthony Johnson Institutional Constraints on Profligate Politicians: The Conditional Effect of Partisan Fragmentation on Budget Deficits (2010)

⁴⁰ Dahiru, M. Issues in the padding and un-padding of budget 2016. Premium Times. Accessed from <https://opinion.premiumtimesng.com> 10th February, 2021 (2016).

⁴¹ Kpedor, G. Budgeting, Budgetary Control and Performance Evaluation (2012).

⁴² Ozekhome, M. Powers, limits, extent of appropriation in budget matters by the NASS vis-a-vis the role of the President (Part 1). The Nigerian Lawyer (2016)

⁴³ Scott, W. R. Institutional theory. Encyclopedia of Social Theory, George Ritzer, ed. Thousand Oaks, CA: Sage. Pp. 408-14 (2004).

i. Ministerial Approval Phase

Each ministry submits its estimates to the ministry of Budget and planning for further consideration and approval. The Ministry of Budget and Planning in turn set up a committee called “Draft Committee” for the review of draft estimates submitted by the ministries. This committee ask each ministry or department to come and defend its proposals; having concord on the proposal, the budget department aggregate the budget in the form of a consolidated estimate of revenue and expenditure. This is sent to the President for approval.⁴⁴

ii. Executive Council Approval Phase

The President upon the receipt of the advanced proposal as approved by the budget and planning present the draft estimate before his cabinets members known as the council of ministers for further consideration and approval. This council discusses and agrees the estimates with the President’s political priorities of government and therefore, the President gives executives approval of the draft estimates before sending it to the National Assembly in form of appropriation bill.⁴⁵

iii. Legislative Approval Stage

The National Assembly comprises the House of Representatives and the house of senate. The President presents his budget packages to the National Assembly at a joint meeting of two houses of assembly. This meeting is known as “budget session”. It is up to the National Assembly to approve or rejects the Bills. In each house, there are standing committees, which relates to the ministries and departments. At such committees, each ministries and departments are invited to defend the increasing budgeting allocation, in justification of their programmes and thereafter, deliberates on the bill.⁴⁶

After the house must have considered and reconciled the budgets estimates in the light of national economic and priorities then the appropriation committee is brought for appropriation purposes. If the house is convinced and satisfied with the proposals, each of them will approve the budget.⁴⁷ Where there are discrepancies in opinion on some particular items, the two houses appoint finance committee that would resolve such differences. The resolution of the finance committee is final on the difference. Afterward they both sit to approve the budget.⁴⁸ On approval by the National Assembly, the budget is sent back to the President for his assents and signature.

⁴⁴ Ozekhome, M. Powers, limits, extent of appropriation in budget matters by the NASS vis-a-vis the role of the President (Part 1). *The Nigerian Lawyer* (2016)

⁴⁵ Ariyo, A. Strategies for civil society participation in national budgeting. A paper presented at a Capacity Building Workshop organised by Socio Economic Rights Initiative (2000).

⁴⁶ Burhead, J. *Government Budgeting*, John Willy & Sons Inc, New York (2018)

⁴⁷ Leadcapitalng Budget Process in Nigeria - Why do we have long delays in passing budgets? Pt 1. Retrieved from <https://leadcapitalng.wordpress.com/2012/10/08/budget-process-in-nigeria-why-do-we-have-long-delays-in-passing-budgets-pt-1/> 10th February, 2021 (2012).

⁴⁸ Coleman, P. T. Reconstructing ripeness I: A study of constructive engagement in protracted social conflicts. *Conflict Resolution Quarterly*, 26 (1), 3 - 42. (2008).

Consequently, it becomes the appropriation Act. This will now be printed and distributed to the ministries and departments in form of approved estimates.⁴⁹

1.5 Budget Padding in Nigeria

A budget is a financial plan for a distinct period of time, mostly a year. Also, a budget maybe referred to as the sum of money assigned for a specific purpose and the summary of proposed expenses along with proposals for how to meet them.⁵⁰ While Padding means “to expand or increase especially with needless, misleading, or fraudulent matter”.⁵¹ Put the words together, Budget Paddings means expanding or increasing the sum of money assigned for a specific purpose. It is observed by the authors that neither the Constitution which expressly specify the functions of the legislature nor the FRA has mentioned about budget padding or related it with the powers of the legislature.

The history of the renowned budget padding in Nigeria can be traced back to the year 2016 when budget padding scandal almost become completely trivialised even though the origin dated back as far as 1914.⁵² The cases of the budget padding drastically reduced people believe and trust in the government and the orchestrated “change” and “corruption crusade”. Ironically, the foundations of the 1914 structure called Nigeria were pivoted on padding by the colonialists. For instance, five padded population censuses were conducted by the colonialists between 1866 and 1911 in this country. The delimitation and delineation of this country were anchored on the outcome of those padded numerical exercises.⁵³ Those were the genesis of the un-amendable crack in our co-existence, in a similar vein, the censuses that were conducted between 1921 and 1952 were also characterised by padding. In his confession, a team player in the British exploitation of Nigeria, Harold Smith, confirmed the padding of population figures. In his words: “Despite seeing vast land with no humans but cattle, we still gave the north 55 million instead of 32 million.”⁵⁴ However, the authors opined that the above type of paddings were not made by the legislature in the course of legislative function by rewriting or inserting some figures or estimates in the budget.

⁴⁹ Aziken, E. Budget Padding: The road to constitutional dictatorship accessed from <http://www.vanguardngr.com/2016/07/budget-padding-road-constitutional-dictatorship/> 13th February, 2021 (2016).

⁵⁰ Kingsley Amah *Budget Padding: Causes and Solutions*. Available from: https://www.researchgate.net/publication/335431030_Budget_Padding_Causes_and_Solutions [accessed May 28 2021].

⁵¹ See <https://www.merriam-webster.com/dictionary/pad>

⁵² Punch News Paper, December, 2016 accessed from <https://punchng.com/budget-padding-nigerias-economy/> 12th February, 2021

⁵³ Vintagesam Nigeria budget and budgeting processes. Opinion Nigeria(2014)

⁵⁴ Suleiman, E.S. (2015). The Nigerian budget process. Understanding monetary policy series No. 56. Central Bank of Nigeria

The road to this unfortunate episode began with the report that the 2016 budget was missing. It was later revealed that the executive had sent a second version different from the original one presented at the joint sitting of the entire, National Assembly by President Muhammadu Buhari.⁵⁵ It was discovered by the legislature in the course of their scrutiny of the budget that certain irreconcilable figures were added by some Ministries, Departments and Agencies (MDAs) by way of inflated budgetary estimates, with possible intention to convert same to personal monetary gains if passed into law. This padding was further complicated by the fact that two versions of the budget existed and the National Assembly was in dilemma as to which to work with. The Presidency, finally accepted the fact that it replaced the first version of the budget with a second one because of discrepancies it discovered.⁵⁶

This was interpreted as a veiled admittance that indeed the budget is padded. This was particularly dramatized by the Minister of Health, Prof. Isaac Adewole during his budget defense on February 8th, 2016 when he claimed that the figures contained in the document before him was strange and did not emanate from him.⁵⁷ This claim reverberated all through the various MDAs when billions of naira was alleged to have been smuggled into the original estimates. The saga was blamed on a so-called budget mafia. The Presidency acted swiftly by approving the sack of the Director General of the Budget office of the federation, Yahya Gusau and other top management staff of the budget office on the 14th of February, 2016.⁵⁸

It was observed that among the projects which votes were surreptitiously jerked up without the knowledge of the executive, were Nigerian railway modernization project:⁵⁹ Lagos-Kano standard gauge rail line project, which cost was raised by N32.5 billion and the consultancy dredging and river training works (N609 million) under the Ministry of Transportation. Others, according to the document, are the Code of Conduct Bureau which had N4.4 billion added to its vote, provision of broadband Internet Service to National Assembly by Nigcomsat, N318 million, Training and Consultancy for Nigcomsat 2 Project, N3.5 billion etc, in the Ministry of Communications. Most scandalous, according to the document, is the case of Ministry of Works, Power and Housing where 82 new projects, principally roads, with a total provision of about N50.63 billion, were inserted in the budget. The aggregate expenditure as contained in the budget details as passed, is higher than that in the Appropriation Bill by about N481 billion, compared to the Appropriation Bill.

⁵⁵ Aziken, E. Budget Padding: The road to constitutional dictatorship accessed from <http://www.vanguardngr.com/2016/07/budget-padding-road-constitutional-dictatorship/> 13th February, 2016 (2016).

⁵⁶ DeLee, D. 'What is padding the budget? Bizfluent (2017)

⁵⁷ Michael, P., (2016). Budget padding, the sociological perspective

⁵⁸ Gbajabiamila, F. Budget and budgeting process in National Assembly (2016), See Premium Times Newspaper, 1st August, 2016 <https://opinion.premiumtimesng.com/2016/08/01/issues-padding-un-padding-budget-2016-majeed-dahiru/>

⁵⁹ <https://www.premiumtimesng.com/news/top-news/202996-highlights-2016-budget-signed-buhari.html>

“The executive made provision for the sum of N60 billion to be used by members of the National Assembly in funding their constituency projects. This was increased by the National Assembly to N100 billion.⁶⁰ Further, according to Falana, about 20 legislators in both chambers of the National Assembly changed the budget by introducing constituency projects worth N100 billion in the Appropriation Bill. Both the Senate and the House allocated to themselves N60 billion and N40 billion respectively.⁶¹

However, Jibrin has accused the Speaker of the House of Representatives, Yakubu Dogara, and three other principal officers of the House of padding the 2016 budget to the tune of over N400bn.⁶² He said that the allegation by former President Olusegun Obasanjo that the National Assembly was populated by corrupt elements could not be dismissed. Ironically, the body language of some past principal officers of the House of Representatives signifies support for budget padding, meaning that budget padding is a legislative ritual.⁶³

The executive proposal of N4.06 billion for the provision for test kits, vaccines and anti-retroviral drugs under the Federal Ministry of Health was reduced to N1.01 billion. In the history of Budgeting system, budget padding is not new.⁶⁴

In 2014, A constitutional lawyer, Tunji Abayomi, had to drag the former Senate President, David Mark and Speaker of the House of Representatives, Aminu Tambuwal, before the Federal High Court, Abuja over padding of the 2014 budget by about N53 billion.⁶⁵ Unfortunately, the court is yet to make pronouncement on this case. The subsequent discussion examines whether the National Assembly can rewrite and insert expenditure in the Budget.

1.6 Can the National Assembly Rewrite and Insert Expenditure in the Budget?

Section 81 of the Constitution, the President is given the exclusive power to cause the budget to be prepared. Upon the preparation of the budget by the Executive, it

⁶⁰ Omonobi, K. D. S., & Agbakwuru, J. (2016). Nigeria: Revealed - National Assembly Padded 2016 Budget

⁶¹ Falana, F. (2016). The Criminality of Budget Padding <http://opinion.premiumtimesng.com/2016/08/14/criminality-budget-padding/> Accessed 21/03/2021

⁶² Ogundipe, S. Ex-Appropriation chair, Jibrin, confesses; says he received N650 million illegal allowance accessed from <http://www.premiumtimesng.com/> (2016).

⁶³ Ogundipe, S. Ex-Appropriation chair, Jibrin, confesses; says he received N650 million illegal allowance accessed from <http://www.premiumtimesng.com/> (2016).

⁶⁴ Okpanachi, J., & Mohammed, N. A. Budget Target Settings and Effective Performance Measurement in Nigerian Hospitality Industry. *Journal of Finance and Economics*, 1(3), 39-50. (2013).

⁶⁵ Premium Times Newspaper, May, 20th, 2014 <https://www.premiumtimesng.com/news/161111-nigerian-lawyer-drags-national-assembly-court-padded-2014-budget.html> accessed on 21/03/2021.

shall be laid before or presented to the National Assembly by the President.⁶⁶ In debating the Appropriation Bill, the legislators may reduce the estimates if there are errors or inflation of the cost of items or if certain items provided for have been purchased before or for any other genuine reason.⁶⁷ The Appropriation bill or amended Appropriation bill is not like other bills. Whereas other bills shall emanate from either of the two houses, money bills shall emanate from the President. So, a money bill is a special bill which cannot be subjected to additions by the National Assembly because it has no power to prepare it. Therefore, the executive retains the exclusive right to prepare the budget; whereas the National assembly retains the right to appropriate funds for the budget proposals.⁶⁸

Neither the Constitution nor the FRA has empowered the National Assembly members to rewrite the national budget or insert some expenditure in the budget by including constituency projects whose costs are arbitrarily fixed by the legislators. As mentioned earlier, Falana⁶⁹ said that about 20 legislators in both chambers of the National Assembly altered the budget by inserting constituency projects worth N100 billion in the Appropriation Bill. If it is established that the alterations were effected after the passing of the budget by both chambers, the issue at hand goes beyond padding and become a clear case of conspiracy, fraud, forgery and corruption. Padding is an unconstitutional infraction when the estimates are increased on the floor of the House.⁷⁰

Consequently, the authors opine that the act of inserting certain contracts into the budget by the National Assembly members amounts to *ultra vires*. Therefore, the legislators have exceeded the scope of their powers. It is a trite law that no person or body should be permitted to exceed his or its lawful or constitutional powers in the course of discharging his or its official duty as in the case of the National Assembly inserting contracts into the Budget which is contrary to its constitutional duties.⁷¹

1.7 Conclusion

In conclusion, budget is an economic process which converts state development plans and priorities into a programme of action. It is usually enunciated to checkmate

⁶⁶ Özer, G., Yilmaz, E. Effects of Procedural Justice Perception, Budgetary Control Effectiveness and Ethical Work Climate on Propensity to Create Budgetary Slack, *Business and Economics Research Journal*, Vol. 2, pp. 1 – 18 (2011).

⁶⁷ Wahab, S. Budget Padding: A crime or not? (2016).

⁶⁸ Kpedor, G. Budgeting, Budgetary Control and Performance Evaluation (2012).

⁶⁹ Falana, F. (2016). The Criminality of Budget Padding
<http://opinion.premiumtimesng.com/2016/08/14/criminality-budget-padding/> Accessed 31st January, 2021

⁷⁰ Pwc Analyses of Nigeria's 2016 budget and medium term expenditure framework, PricewaterhouseCoopers, Budget Bulletin Lagos Nigeria (2016)

⁷¹ See the cases of *Ashbury Carriage Co. v. Riche* (1875) CR 7 HL 653; Kabiru Mohammed Danladi (2012). *Outline of Administrative Law and Practice in Nigeria*, Ahmadu Bello University Press Limited, Zaria, pp. 123-132.

the insatiable wants of man with a bid to regulating and moderating expenses along income (revenue) in accordance with national interests. Budget process in Nigeria involves the budget planning, enactment, implementation and monitoring. This process revolves round the executive and the legislative arms in the democratic system. The National Assembly(ies) are/is vested with the power to approve and scrutinize the appropriation Bill/ budget submitted to it by the Executive in order to remove excesses and corruption in the process thereto. The practice of budget padding however by the National Assembly, is entirely alien and outside the powers of the lawmakers. Therefore, such practice is unconstitutional and should avoided so as to continue to uphold the trust and confidence reposed on the National Assembly by the citizens of Nigeria. In the event where the National Assembly is interested in something like a specific project or appropriation of money for a particular purpose should liaise with the relevant Department or Agency of government so as to be reflected in the Bill before sending it to the National Assembly so as to avoid of being ultra vires.