

Themes on
**Jurisprudence
& International Law**



Essays In Honour Of Professor Ayodele Ajomo, OFR
Edited by J. O. Fajana


**THEMES ON JURISPRUDENCE
AND INTERNATIONAL LAW**

For Prof. Oussama

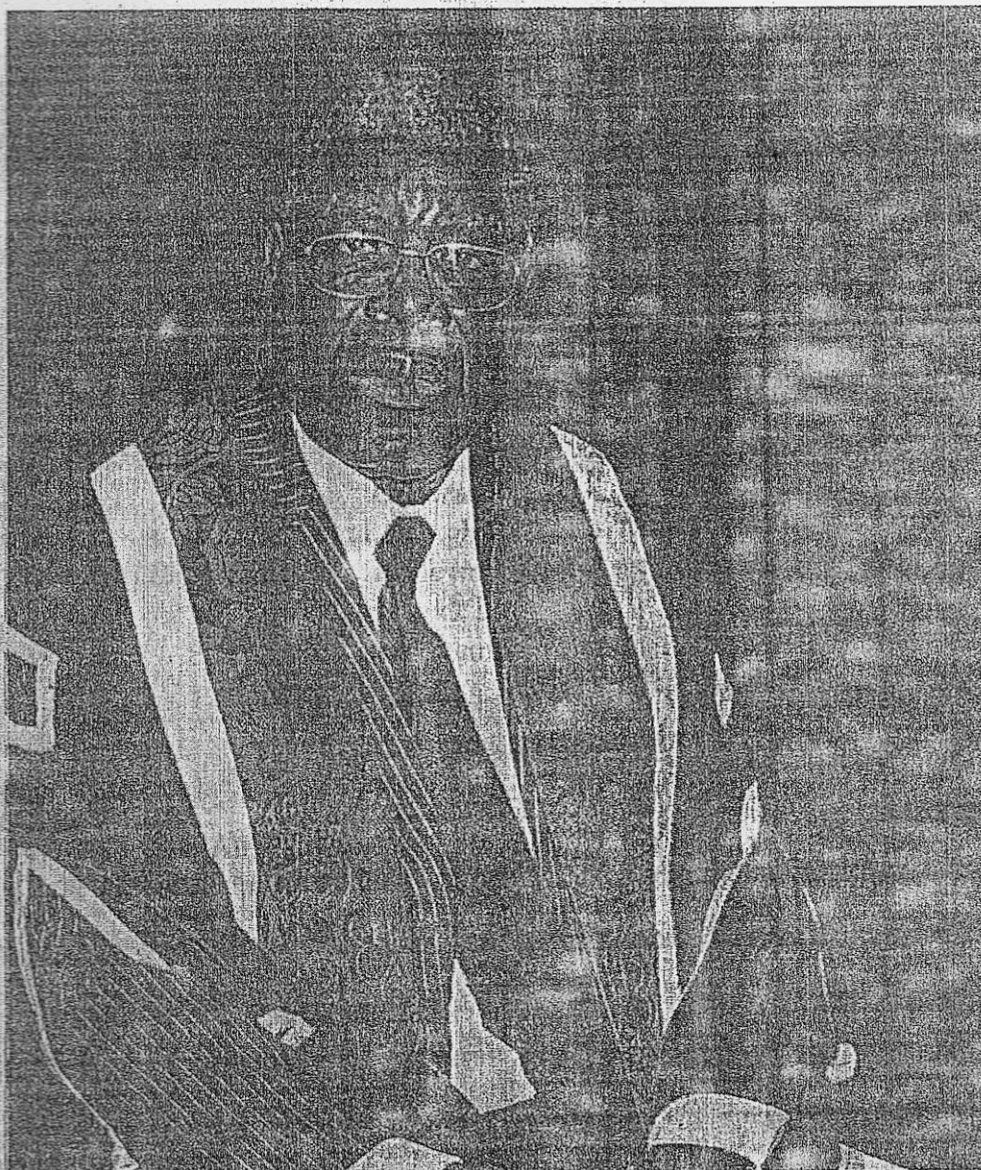
THEMES ON JURISPRUDENCE AND INTERNATIONAL LAW

Essays in Honour of Professor Ayodele Ajomo, OFR

**Edited by
Professor J. O. Fabunmi**

 **Total Communications Ventures
Lagos, Nigeria**

HONOUREE



Professor M. A. Ajomo; FNIALS, OFR
NIALS Fellows' Dialogue, Abuja,
December 3 and 4, 2007

Achievers' Series Book Project Vol. 2

THEMES ON JURISPRUDENCE AND INTERNATIONAL LAW
Essays in Honour of Professor Ayodele Ajomo, OFR

Month and Year of Publication: February 2009

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ISBN: 978-978-088-123-8

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Published in Nigeria by

Total Communications Ventures
45B, Apapa-Oshodi Expressway,
Oshodi. P. O. Box 13168, Ikeja, Lagos.
Tel: 234-1-7379656, 08066759838, 07067989447, 08060672264
E-mail: cerdc@yahoo.com

Sales Representatives:

South Africa

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e-mail: orders@africanbookscollective.com

Editor

Professor J. O. Fabunmi, Ph.D (Birmingham)
Former Dean, Faculty of Law
Obafemi Awolowo University
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CONTEMPORARY LEGAL ISSUES IN GOVERNMENT BUDGETING

*"Most Nigerians, and even the business class; the private sector, organised and the unorganised, no longer get agitated over delayed budgets. I am sure most of them don't even bother to know the content of the budget. Make no mistakes, whether the budget is approved or not, at the end of the year, the Federal Government will record huge budget deficit financing indicating over-spending sometimes in the region of 30 per cent of the total budget sum."*¹

The above statement is symptomatic of the degree of apathy that characterises the budget process in Nigeria. While huge money is appropriated for various purposes annually, there is little to show for it in terms of service delivery.² The legal and administrative frameworks of the budget process have become considerably undermined thereby limiting the effectiveness of governmental programmes and impairing the confidence of the citizens in their government.³ The current administrative and legislative⁴ attempts to address some of the problems have generated heated controversies especially between the executive and legislature and federal and state governments.

¹The Federal Budget in Nigeria has hit a trillion naira mark. For instance, the 2004 Federal Budget Estimate is N1.302 trillion. See the 2004 Budget Speech by President Olusegun Obasanjo to the Joint Session of the National Assembly. See *Business Day*, Monday 26, April 2004, pp. 10-11.

²O. Omopariola, *Government Budgeting in Nigeria: Principles, Policies, and Practices*, 2003, (OAU Press Ltd. Ile Ife), p. 142.

³For instance, a Due Process and Budget Monitoring & Price Intelligence Unit headed by Mrs. Oby Ezekwesili has been established in the Presidency. This singular step was said to have saved the country over N85b as at the last count since its establishment. Also, the current Finance Minister, Mrs. Ngozi Okonjo-Iweala has carried out far-reaching reforms such as payroll audit, elimination of ghost workers, monetisation, customs services reforms, etc., that saved the nation a record, \$1b. in less than one year she assumed office. See "The Winning Women of Aso Rock", *TELL* April 5, 2004, p. 21.

⁴For instance, a Bill on Budget Process was introduced by Senator Sanusi Daggashi. There is also a Bill on establishment of the Office of the Accountant-General of the Federation introduced by Kolawole Adewale, there is also an Executive Bill on the establishment and management of the State Joint Local Government Account.

This paper discusses some of the fundamental legal issues relating to the current attempt to reform the budget process in Nigeria. The focus is on the Federal budget process for obvious reasons. The federal budget is the major driver of the country's economy because of the huge revenue available to the federal government⁵ and also the most controversial because of multi-party nature of the National Assembly government. The problem is even worse at the state and local government levels. The Guardian Newspaper in a recent editorial commented thus:

"Budgeting has virtually lost its very essence, which is essential to guide expenditure in tune with incomes. This problem is usually phenomenal in the states and local councils across the country, reflecting in virtual absence of the so-called dividends of democracy."

Therefore, whatever is said about the Federal budget is also true or even worse at the lower levels of government.

This paper is divided into Four Parts. Part one considers the meaning, purposes, and the sources of law relating to government budget in Nigeria. Part two is devoted to a consideration of the entire budget process under the civilian and military regimes. Part three discusses the major contemporary legal issues relating to the budget process while the paper is concluded in part four with suggestions.

1.0. What Is Budgeting And What Are Its Purposes?

Budget is a plan for financing the activities of government for a fixed future period, usually one year.⁶ Budgeting; whether personal, organizational or public, is premised on the basic principle of economics- scarcity of resources and the expediency of using the available resources in a manner, which is considered to be most beneficial. Budgeting thus involves a determination for a future period of time; what is to be done, the manner in which it is to be done, and the cost of

The revenue in the Federation Account is major source of revenue for all levels of government and the revenue is shared between the federal, state, and local governments in the ratio of 56:24:20. See Allocation of Revenue (Federation Account, etc.) (Amendment) Act No.106 of 1992 as modified by a Presidential Order in 2003.

O. Omopariola, op. cit. p. 142.

doing it. It requires that the broad objectives of the government be broken down into detailed work-plans for each project and for each unit of organisation. Thus each responsible official and supervisor in the organisation will have a plan of action, which if successfully implemented should result in the organisation meeting its overall objectives.⁷

The purposes of government budgeting generally include the following:

- i. It serves as a catalyst for growth. For instance, the government may choose to give priority attention to certain strategic areas, which may bring about growth and development of other sectors.
- ii. It enables the citizens to judge the priorities and performances of government.
- iii. It provides the mechanism for legislative control over executive in spending public money in a democratic system of government.
- iv. It serves as a guide for the allocation and management of public revenue among competing priorities.

1.1. The Legal Basis Of Budgeting

The budget process is carried on within an established legal framework. Our discussion of the process will span the following sources:

- i. The Constitution: The Constitution of the Federal Republic of Nigeria provides for the establishment of the Federation Account, Consolidated Revenue Account, the roles of the President and the National Assembly in the enactment of the Appropriation Act, post approval audit by the Auditor-General of the Federation, *inter alia*. The Constitution is the fundamental law of the land; hence its provisions are supreme.
- ii. Statutes: There are statutes on various stages of budgeting. There is for instance, Finance Control and Management Act⁸ on management of the Consolidated Revenue Fund and other Public Funds of the Federation

⁷Ibid. p. 1.

⁸Cap 144, Laws of Federation of Nigeria, 1990

such as Contingency Fund, Reserve Fund, and Development Fund.⁹ Allocation of Revenue (Federation Account, Etc.) Act¹⁰ also makes provisions for allocation of revenue among the federal, state, and local government councils. If the Bills that are currently pending before the National Assembly are passed into law, they will add to the corpus of law relating to the budget process in Nigeria.¹¹

iii. Administrative Regulations: The most notable Administrative Regulations in relation to budget process are

- (i) *Financial Regulations*¹² and
- (ii) *Circulars* from the Ministry of Finance, Budget Office, Accountant-General of the Federation, Auditor-General of the Federation, etc.

Financial Regulations is the manual by which government finance and accounting arrangements especially in relation to receipts and disbursement of public funds are regulated with the aim of ensuring accountability and avoiding fraud or malpractices.¹³ For example, it contains procedures for releasing and spending government funds; keeping of government books of account and properties; and imposes duties and responsibilities on various officers involved in the financial operations of the government. However, much as the Financial Regulations are to be strictly complied with; there is ample scope for relevant officers to make judgements, and apply initiatives in the application of rules and procedures as dictated by circumstances "as long as it is legitimate and defensible."¹⁴

iv. Decided Cases: There are a few cases decided on controversies that have arisen on budget process. Some of the cases referred to in this paper are *A. G. Bendel State v A. G. Federation*,¹⁵ *Owoyemi v Governor of Edo*

⁹See Section 18 and First Schedule Part 1 of Finance Control and Management Act for the list of all the Public Funds of the Federation.

¹⁰Cap 16 L. F. N. 1990 as amended by Allocation of Revenue (Federation Account, etc) Act No. 106 of 1992.

¹¹See footnote 6.

¹²Financial Regulations were hitherto called Financial Instructions. See the Preface by the Commissioner for Finance to Revised Financial Regulations 1976 (Federal Ministry of Information), 1976.

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵[1981] N. S. C. C. 315

*State*¹⁶ and *Okocha v Civil Service Commission of Edo State*.¹⁷

- v. Budget Practice: Certain practices have become well established over the years in relation to the budget process. For instance, during the military rule, the budget speech was usually read on January 1 of every year. This is followed by the Press Release by the Minister of Finance; on the breakdown of the Budget a few days after the budget speech. There seems to have been a departure from this practice since 1999, with the commencement of a civil rule. Also, in a civilian regime, the budget is usually read to the joint session of the National Assembly, although the Constitution merely requires the President to "prepare" and "lay" the budget proposal before each House of the National Assembly.

2.0. The Budget Process

The Budget processes, for the sake of simplicity and convenience, will be divided into eleven stages, which are discussed below. The institutions, officers/Offices that are crucial to the budget process are

- (i) President,
- (ii) Minister of Finance,
- (iii) Budget Office,¹⁸
- (iv) Accountant-General,
- (v) National Assembly,
- (vi) Appropriation/Finance Committee,
- (vii) Auditor, etc.

¹⁶[2004] 5 N. W. L. R. (Pt. 856) p. 175.

¹⁷[2004] 3 N. W. L. R. (Pt. 861) p. 494.

¹⁸The Budget Department plays a central role in the directing of the implementation of the budget. On May 8 1980, about seven months into the second republic, the budget office was transferred from the Federal Ministry of Finance to the office of the Presidency under the control of Director of Budget and Special Adviser to the President on Budget Affairs. In January 1984 (after the military coup of 1983), the post of Director of Budget and Special Adviser to the President on Budget was abolished and the budget office was transferred back to the Ministry of Finance. By 1988, the Budget Office was moved back to the Presidency and later became a Ministry having its own Minister. At the end of year 2000, the Budget Office was transmuted to an autonomous Extra Ministerial Department whose head was reporting directly to the Minister of Finance. See E. Omolehinwa, op. cit. page 68.

The interrelationship between these officers and offices vary in civilian and military regimes.

2.1. Determination of the Objectives and Strategies

The first stage in the budgeting process is to determine the main objectives of the budget and the strategies for achieving them. This is the major driver of the direction and performance of the economy. In mature democracies, the various political parties in the society would have articulated their philosophies and proposed strategies on such issues in their manifestoes. Regrettably, people are still being voted into power in Nigeria based on religious, ethnic, and cultural sentiments rather than their competence and the quality of their programmes.

Although the determination of the main objectives of the budget and the strategies for achieving them are basically a policy decision; it should be done in accordance with the Fundamental Objectives and Directive Principles of State Policy,¹⁹ the Development Plan, the Manifestoes of the political party in power; or the electoral promises of the Chief Executive. The Federal Government recently presented a medium-term national programme, which is code-named the National Economic Empowerment and Development Strategies (NEEDS). More specifically, the 2004 Federal budget is designed to reinvigorate the economy and put it on the part of sustainable growth, development, and poverty alleviation.²⁰

No matter how good or bad a government is performing, different interest groups in the society will support the programmes of the government while some will be opposed to them. If more people are displeased with the government programmes, the government may be voted out of power in the next election.²¹ However, the integrity of the electoral process in Nigeria has become so undermined that most people do not even bother to vote. The general belief is that election results are pre-determined irrespective of what happens at the polling booths. Where the feeling of lack of confidence in the process of peaceful transition of government is prevalent; the people tend to frequently resort to civil disobedience or mass action

¹⁹The parameters of good government are set out in Chapter II of the Constitution. The Chapter contains the political ideals as to how the society can be organised and ruled to the best advantage of all." J. O. Akande, *Introduction to the Nigerian Constitution*, (1982) Spectrum, p. 13

²⁰See the 2004 Budget Speech by President Olusegun Obasanjo to the Joint Session of the National Assembly. See *Business Day*, Monday 26, April 2004, pp. 10-11.

²¹In a parliamentary system of government, there is usually a shadow government constituted by the opposition party articulating alternative approaches to governance and ready to take over government if the ruling party fails to get the majority vote or a vote of no confidence is passed on the ruling party.

to check the powers of the government as we are presently witnessing in Nigeria.²²

2.2 Estimates of the Cost

As laudable as the objectives and strategies set by the government may be, they will not be self-executing. Human and material resources will be required to achieve them. Hence, the second critical stage in the budget process is the estimation of what it will cost the government to achieve those objectives. The government must assess the performance of the existing sources of income and expenditure and evolve means of either generating more revenue or reducing costs. Choices may have to be made between raising taxes and borrowing. Except where government resorts to deficit budgeting, the level of services that will be provided will be limited to the level of resources available. The bottom line is that every society must determine the level of services it wants to provide for its people and how to generate the requisite resources from all available sources on a sustainable basis. If a society decides to repair only one road every year out of a thousand roads, it will take one thousand years to repair all the roads. It is clear that after a few years, the few roads repaired in the previous years would have become terribly bad, therefore, making the impact of the yearly allocation for road repair insignificant. Quite sadly, this scenario depicts, to a large extent, the pace and impact of the various budgets in Nigeria. This is because all the levels of government in Nigeria have been relying mainly on the revenue from the Federation Account and borrowing. The contribution of the people especially the rich and self-employed, through taxation, has been little as the government continues to exhibit lack of political will to make the rich pay taxes.

2.3. Budget Calls

After deciding the main objectives and strategies of the budget, the Minister of Finance will send a 'budget call' or 'call circular' to all Ministries and Parastatals requesting them to prepare and forward their budget estimates to his office within a stipulated period of time. The budget call outlines the priority areas of the government and the rules and regulations to be observed in the preparation of the budget estimates. Upon the receipt of the budget call, the Chief Accounting Officer/Head of each Ministry will request each Divisional Head to prepare their budget

²²There have been a spate of rallies, strikes and mass action under the aegis of the Nigerian Labour Congress (NLC), the United Conference of Political Parties (UCPP), and the Coalition of Civil Society Groups on myriads of issues ranging from fuel price hike to alleged electoral rigging, etc.

estimates and submit them to the Budget Divisions of the Ministry for collation and analysis. The proposed estimates prepared by the budget division are submitted to the Ministry's Budget Committee. The final estimate is then prepared by the Budget Division based on the recommendations of the Budget Committee for the approval of the Chief Accounting Officer/Head of the Ministry. On getting the draft estimates from the Ministries, the Minister of Finance will review and adjust the estimates as he may consider appropriate to ensure that they comply with the budget guidelines and prepare the Consolidated Estimates of Revenue and Expenditure (C. E. R. E.). The CERE is considered and approved by the Federal Executive Council (FEC) with amendments as may be considered appropriate.

2.4. Establishment of the Federation Account and Consolidated Revenue Fund

The Constitution mandates the Federal Government to keep certain special public accounts and establishes a framework for operating such accounts. These accounts are the Federation Account (FA) and the Consolidated Revenue Fund (CRF). Section 162 of the Constitution provides that all the revenue collected by the Federal Government except the proceeds of personal income tax; shall be paid into FA and any amount standing to the credit of the FA shall be distributed among the Federal, State, and Local Government Councils in accordance with the formula prescribed in the Allocation of Revenue (Federation Account, etc) Act.²³ The Federal Government's share of the revenue from the FA is paid into CRF of the Federal Government. Hence, the Federal Government is the exclusive owner of the revenue in the CRF while it is a trustee of the revenue in the FA for all the beneficiaries.²⁴ The management of the FA by the Federal Government has always generated serious controversies, some of which will be discussed in part three of this paper.

2.5. Appropriation

There are provisions regulating how withdrawals are made from the CRF. Withdrawals can only be made from the CRF under two circumstances:

²³No. 106 of 1992

²⁴See *A. G. Federation v A. G. Abia State & 35 Ors.* (Supra)

- (i) to meet expenditures that are charged upon the account²⁵ and
- (ii) where the withdrawal is authorised by an Appropriation Act or Supplementary Appropriation of the National Assembly.²⁶ Our focus in this paper is on withdrawal through appropriation.

The President is required to prepare and lay before each House of the National Assembly at any time in each financial year, estimates of revenues and expenditure of the Federation for the next financial year.²⁷ This is presented to the National Assembly in form of an Appropriation Bill seeking legislative authorisation to withdraw specific sums of money for specific purposes listed Ministry by Ministry and Programme by Programme in the Bill.²⁸ The Constitution neither prescribes the time within which the President must present the Appropriation Bill nor the time during which the National Assembly must approve it. Each House of the National Assembly and their various committees will consider the Bill independently. If there are material differences in the Bills approved by each of the two Houses, a Joint Finance Committee comprising of equal number of members of each House will be set up to iron out the differences.²⁹ Where the Joint Finance Committee fails to resolve such differences, the Bill shall be presented to the National Assembly sitting at a joint sitting. If passed at the Joint sitting by a simple majority of the members present and voting, the Bill shall be presented to the President for assent.³⁰

The procedure for reconciling the differences between the Appropriation Bills as passed by the two Houses was subject of the dispute in the case of *A. G. Bendel v A. G. Federation*.³¹ In 1981, a new revenue-sharing arrangement was enacted by the Federal Government. The state governments not controlled by the ruling party at the centre, the National Party of Nigeria (NPN), were dissatisfied with the share given to the states by the Act. The Senate passed a Money Bill presented

²⁵The salaries and allowances of the holders of offices mentioned in section 84(4), including the Auditor General, are charged upon the CRF. The responsibility of determining the salaries, allowances, of the office holders is vested in the Revenue Mobilization and Fiscal Allocation Commission. The pension of the President and Vice President and recurrent expenditure of judicial officers in the federation are also charged upon the CRF. See section 84(2) CFRN 1999

²⁶Section 80(3) CFRN

²⁷Section 81(1) CFRN

²⁸O. Omopariola, *op cit.* p.99

²⁹Section 59(3) CFRN.

³⁰Section 59(4) CFRN

³¹*Supra.*

to it by the President with certain amendments while the House of Representatives also passed the Bill with amendments of its own. More particularly, the share allocated to the states by the Senate was less than what was approved by the House of Representatives. In that state, the Bill was sent to the Joint Finance Committee of both the Senate and House of Representatives, which approved the Bill as passed by the Senate by 13 to 11 votes. Thus without resolving the differences, the bill was presented to the President for his Assent. The states complained that the procedure used in passing the Act was unconstitutional and that the Act represented an amended version of the bill as passed by the Senate only. Nine states brought separate actions in the Supreme Court challenging the constitutional validity of the Act. It was agreed by all the parties concerned that the suit of the Bendel State should be used as a test case. The Supreme Court held in a unanimous judgement that failure to refer the Bill back to the two Houses after the proceedings in the Joint Finance Committee was a violation of the procedure laid down in the Constitution and therefore, the Act was null and void.

From the above, we can see that the consideration of the Appropriation Bill by the National Assembly may take and usually takes a long time. Where the Appropriation Bill has not been passed into law at the commencement of the financial year, section 82 authorises the President to withdraw money from the CRF for a period not exceeding 6 months or until the enactment of the Appropriation Act, whichever is the earlier. However, the withdrawal shall not exceed the amount authorised in the previous Appropriation Act.³² This exemption aims at avoiding a situation whereby the machinery of the Federal Government will be grounded to a halt where the National Assembly could not or fails to approve the Appropriation Bill submitted by the President.

Also, where the amount appropriated for a particular purpose proves to be inadequate or a need has arisen for expenditure, which no amount has been approved in the Appropriation Act; the President is empowered to present a Supplementary Appropriation Bill to the National Assembly,³³ which must also be passed in accordance with the same procedure under section 81 of the Constitution. A Supplementary Appropriation Act was recently enacted by the National Assembly sequel to the recent proclamation of the state of emergency in Plateau State.

³²Section 82 CFRN 1999.

³³The Constitution does not make express provisions for a supplementary budget and the circumstances in which it is allowed. However, section 80(2) makes reference to "Supplementary Appropriation Act".

2.6. Disbursement of Funds

The fact that monies have been appropriated for particular purposes in the Appropriation Act does not *ipso facto* make the money a charge on the Consolidated Revenue Fund (CRF).³⁴ There are still administrative steps to be taken before the money is disbursed. The President directs the Minister of Finance to issue Warrant of Expenditure to the Accountant-General. A Warrant of Expenditure is the instrument through which the Accountant-General receives instruction to disburse funds to government Ministries and Departments.³⁵ The Accountant-General cannot authorise the release of funds to the Ministries unless he is authorised to do so by the Minister of Finance who is responsible for all the financial businesses of the Federal Government to the President.³⁶ The Accountant-General is the Head of the Federal Government Accounting Services and Treasury.³⁷ He is charged, *inter alia*, with the responsibility for supervising, including the operations of the CRF and other public funds. The Accountant-General is therefore at the centre of disbursement of funds for budget implementation and is responsible to the Minister of Finance.

Upon the receipt of the Warrant of Expenditure from the Finance Minister, the Accountant-General issues payment instructions called Mandate to the CBN to credit the account of the Ministry or Parastatal listed in the warrant. Until the last quarter of 1999, the mandate was usually issued for a period of three months. However, as from 1st October 1999, the Accountant-General now releases fund to the Ministries on monthly basis.³⁸ The reason given to this is:

"to maintain and sustain prudent cash management of public funds (by spreading) the release

³⁴Section 82 CFRN 1999.

³⁵There are 6 categories of Warrant of Expenditure issued for different purposes viz: Annual General Warrant- issued for funds to pay personal emoluments; Provisional General Warrant- issued to authorise payment pending the enactment of the Appropriation Act; Supplementary General Warrant- issued to authorise payment for funds approved in the Appropriation Act; Supplementary (Contingencies) Warrant- issued to authorise payment from the Contingencies Fund; Virement Warrant- issued to authorise transfer of funds from a vote to another within the same expenditure head; Supplementary (Statutory Expenditure) Warrant- to authorise additional expenditure above the amount included in the general warrant or in a supplementary general warrant. See O. Omopariola, *op. cit.* p. 67 See also E. Omolehinwa, *op. cit.* pp. 71-72.

³⁶The executive powers of the federation is vested in the President who may, subject to the provisions of the law, act either directly or through the Vice-President and Ministers. See Section 4 of the CFRN 1999.

³⁷Financial Regulation 101.

³⁸*Ibid.*, p. 73.

*from quarterly warrant allocation of funds to correlate with the rate cash inflow into government treasury.*³⁹

In practice, the process of receiving actual payment for the use of Ministries, and Parastatals is harrowing as a result of undue bureaucracy. Several trips are usually undertaken to the Federal Capital Territory at huge cost before the accounts of the beneficiaries are credited. The general belief is that the officers in the various offices involved with the disbursement always demand and receive gratification as a pre-condition for processing the requisite papers. While this writer is not in a position to confirm whether this belief is true or not, it is suggested that the Ministry of Finance should work out an arrangement whereby disbursements will be paid into the account of the beneficiaries expeditiously within a prescribed period of time without the beneficiaries having to follow their allocations from table to table.

2.7. Financial Regulations on Government Spending

After payments have been made to the Ministries, it is useful to consider the framework for ensuring that there is optimum use of the money for the purposes for which they have been budgeted. The rules and regulations for the management of the funds at this level are to be found in the Revised Financial Regulations 2000. The primary obligation of ensuring accountability of public fund is on the Permanent Secretary or Head of an Extra-Ministerial Department who is the Chief Accounting Officer of each Ministry or Extra-Ministerial Department. The Accounting Officer is assigned the following eight duties under Financial Regulations 104(ii):

- i. The establishment of proper budgetary and accounting system in his Ministry for the purpose of enhancement of internal control, accountability, and transparency;
- ii. The establishment of essential management control tools in order to minimise waste and fraud;
- iii. The collection of government revenues and ensuring that such revenues are paid into the Consolidated Revenue;

³⁹Federal Treasury Circular No. Cir/TR/No. A6&B Ref. No. OAGF/PRS/005/III/20 of 27th July 1999.

- iv. The submission of monthly and other periodical accounting returns and transcripts to the Accountant-General of the Federation;
- v. The safe custody and proper maintenance of all Government assets under his care;
- vi. The responsibility for answering audit queries pertaining to his Ministry before the Public Accounts Committee;
- vii. The rendering of proper accounts for all public monies received and expended by his Ministry;
- viii. The responsibility for prudent spending of Public Funds allocated to his Ministry or Extra-Ministerial Department or Agency.

The Accounting Officer is personally liable for any wrong doing in his Ministry. It is not an excuse whether or not he delegated his duties to others.⁴⁰ The Accountant General of the Federation is supposed to have monthly feedback on budget implementation through the transcript of accounts from Ministries and Departments.

The utilisation of government fund in Nigeria is characterised by malpractices. First, due to lack of information on when allocations are received by Ministries and the actual amount received, some unscrupulous government officials usually lodge their allocations in private accounts for their personal gains before paying the money into the official accounts. In the process, the utilisation of the money for the purposes for which they were meant, including payment of salaries and settlement of contractual obligations, are often delayed. Against this background, the proposal to extend the practice of publishing revenue allocations to all tiers of government to all Federal Ministries and Parastatals in the newspapers is welcome.⁴¹ Second, some unscrupulous top government officials usually open accounts with banks based on patronage leading to government's fund being trapped in distressed banks. Some officers have also perfected the act of circumventing the financial regulations to get money out ostensibly for unlawful purposes; for their selfish interests, and that of their cronies.

2.8. The Auditor-General and Post-Spending Checks

The Auditor-General of the Federation occupies a central position in ensuring

⁴⁰See Revised Financial Regulation 104(iii)

⁴¹"FG to Publish Ministerial Allocations- Chikelu", This Day, Tuesday June 15, 2004, p. 6.

budget accountability. For this reason, the Office of the Auditor-General of the Federation is established in the Constitution.⁴² He is appointed by the President on the recommendation of the Federal Civil Service Commission subject to the confirmation of the Senate.⁴³ He enjoys security of tenure of office until attaining the retirement age. In this regard, the Auditor-General cannot be removed on the initiative of the President alone. Rather, he can only be removed from office by the President on two specific grounds viz:

- (i) inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or
- (ii) for misconduct based on an address supported by two-thirds majority of the Senate praying that he be so removed.⁴⁴ The immunity of the Auditor-General of the State against unlawful dismissal was recently affirmed by the Court of Appeal in *Owoyemi v Governor of Edo State*⁴⁵ and *Okocha v Civil Service Commission of Edo State*.⁴⁶

The duty of the Auditor-General is to audit "the public accounts of the Federation and all offices and courts of the Federation."⁴⁷ He has a responsibility to examine the relevant accounts "in such manner as he may think fit" and shall ascertain whether in his opinion:-

- a. the accounts have been properly kept;
- b. all public monies have been fully accounted for, and the rules and procedures applied are sufficient to secure an effective check on the assessments, collection, and proper allocation of revenue;
- c. monies have been expended for the purpose for which they were appropriated and the expenditures have been made as authorised; and
- d. essential records are maintained and the rules and procedures applied are sufficient to safeguard and control public property and funds.

⁴³Section 86(1) CFRN.

⁴⁴Section 87 CFRN.

⁴⁵[2004] 5 N. W. L. R. (Pt. 856) p. 175.

⁴⁶2004] 3 N. W. L. R. (Pt. 861) p. 494.

⁴⁷Section 85(2) CFRN.

The scope of the Auditor-General does not extend to the appointment of auditors for statutory corporations, commissions, authorities, and agencies, including all persons established by an Act of the National Assembly.⁴⁸

However, the Auditor-General shall provide such bodies with:

- i. a list of qualified auditors qualified to be appointed by them as external auditors and from which the bodies shall appoint their external auditors, and
- ii. guidelines on the level of fees to be paid to external auditors.

The Auditor-General is however required to comment on the Annual Accounts of such bodies and the Auditor's Report thereon.⁴⁹ Furthermore, the Constitution expressly empowers the Auditor-General to "conduct periodic checks" of these bodies.⁵⁰

2.10. Legislative Audit

After the Auditor-General has completed his tasks, there is the need to bring the financial activities of government and the comments of the Auditor-General to the attention of the public. The Auditor-General is obliged to submit his reports to each House of the National Assembly "within 90 days of the receipt of the Accountant General's financial statement".⁵¹ It is remarkable that the Constitution does not prescribe the time within which the Accountant-General of the Federation shall submit his financial statements to the Auditor-General. Upon the receipt of the Auditor-General's report, each House of the National Assembly is required to refer it to its Public Accounts Committee (PAC).⁵² While no specific time is

⁴⁸This specific provisions had put to rest the controversy generated by section 79(2) of the 1979 Constitution which the then Auditor-General invoked to appoint auditors for some government parastatals on the ground that his audit duties covered "all persons and bodies established by law". The Attorney-General of the Federation and Minister of Justice, Richard Akinjide, thought otherwise as he declared the action taken by the Auditor-General as "unrealistic and could paralyze the smooth working of the machinery of government and its agencies". See Letter of the Attorney-General of the Federation of 2nd February 1981 Ref. No. CO105/Vol. 1/125 to the Minister of Science and Technology as reproduced on p. 27 of the Report of the Auditor-General to the Federation on the difficulties encountered in the operation of section 79(2) of the 1999 Constitution.

⁴⁹Section 85(3) CFRN.

⁵⁰Section 85(4) CFRN.

⁵¹Section 85(5) CFRN.

⁵²Section 85(5) CFRN.

prescribed within for such reference, it is presumed that it shall be done within a reasonable time. Upon the reference, the PAC is expected to review and scrutinise the report, hear evidence from agency official or anyone considered to be necessary and report its findings and recommendations to the National Assembly where appropriate action is taken after due consideration. In practice, PACs have not been as vibrant as one would expect. For instance, little or nothing has been heard about the activities of PAC since August 1999 when the civil rule under the 1999 Constitution began. This may be due to the fact the Auditor-General's report is usually delayed. The limited utility of the PAC in the second republic has made a writer to describe the system as "an imperfect imitation of the British Parliamentary traditions."⁵³ One of the measures that could be taken to promote accountability is to promote access of the members of the public to information on government activities. If information about government activities generally is made accessible to the public in time, it may encourage timely intervention by the National Assembly where there is perceived financial recklessness and minimise the damage. The current situation whereby the Auditor-General's report is brought to the attention of the public (if at all) several years after the deed had been done is like attempting to lock the stable after the horse had bolted. Unfortunately, the Freedom of Information Bill presented to the House of Representatives since 2003 has not made any significant progress.⁵⁴

It is useful to briefly also consider the budget process during the military rule.

2.11. Military

The Constitution, including the provisions on budget process, is usually suspended during military rule. However, the normal administrative structure/offices such as Ministry of Finance, the Offices of the Accountant General and Auditor-General are usually left untouched although their effectiveness is considerably undermined as a result of the unwillingness of the Military to submit to public scrutiny. For instance, the auditors were faced with enormous challenges in the performance of their duties. The audit queries of the Auditor-General were often ignored or

⁵³Ibid. p. 140

⁵⁴See Bill No. HB presented by Hon. J. S. Ngokwe. See List of Bills Presented to the House of Representatives June 2003-February 2004 in Nigerian Journal of Legislation, January-March 2004, Vol. 1, No. 1, p. 169.

circumvented. Also, the auditors usually are not allowed to audit the account of certain ministries. For instance, it was reported that:

*"When the auditors went to the division of the armythe auditing officers weredriven away. There have been occasions when they were even flogged."*⁵⁵

The C. E. R. E. is laid before the Treasury Board which is composed of the Head of State as the Chairman and some Ministers including the Minister of Finance and Minister of Economic Planning and Establishments. If the proposed estimate of a particular Minister is reduced, he may be given the opportunity to argue his case before the Treasury Board.⁵⁶ When the Treasury Board has settled all the relevant claims, the C. E. R. E. is then submitted to the Federal Executive Council (FEC). The FEC may then amend the estimates further before passing them to the Supreme Military Council/Armed Forces Ruling Council.⁵⁷

In an apparent attempt to promote accountability, the Military government set up a Public Account Committee (PAC) comprising of members from outside the civil service to review the reports of the Auditor-General. However, the PAC met infrequently and the Government never acted upon their reports when they met.⁵⁸ The breakdown of the system of public accountability resulted in uncontrolled expenditure, huge borrowing (internal and external), and budget deficit despite the astronomical rise in the revenue receipt of the federal government between 1966-1976. In the attempt of many Ministries to have a greater share of the supposedly incremental "national cake," many projects were hurried through the approval process with very little feasibility studies and little plans for implementation. The result was that the projects were not properly cost at the time of approval. As a result of this, the costs of projects were frequently revised upward after approval.⁵⁹

⁵⁵See First Report of the Public Account Committee 1979 Session (Federal Ministry of Information, Lagos) 1979. p. iii.

⁵⁶Omopariola, op. cit. pp. 101-102

⁵⁷Ibid.

⁵⁸E. Omolehinwa, p. 98

⁵⁹For examples on divergence between approved and revised capital budget estimates of some of the Federal Government projects see E. Omolehinwa, Ibid. pp. 98-100.

3.0. Contemporary Issues

The Nigerian budget process within the past five years alone has generated so many controversies that can fill volumes of books. The recurring features have been: delay in the enactment of the Appropriation Act due to executive and legislative conflict, huge deficit,⁶⁰ non-disbursement of the allocation approved under the Appropriation Act, and shoddy implementation, among other things. The 2004 Budget will be used mainly as the basis of our discussion. Hence, it is important to have a general overview of the 2004 Budget.

The 2004 Budget was read to the Joint Session of the National Assembly on Thursday 18th December 2004. According to the President, the aim of the Budget is to "support reform programmes for sustainable growth, development and poverty reduction".⁶¹ In his words:

"The 2004 Appropriation Bill before you is designed to underpin and support the reforms programme. The reforms programme is about people. It puts the priority of the average Nigerian at the centre by focusing on job creation and employment generation for our youths through support for an enabling environment for the private sector so that it can create jobs. We are looking to job creation; particularly in our non-oil productive sectors, so that we can diversify our economic base. It is about enhancing the quality of life through food security. The sectors with great potentials are; agriculture, solid mineral development, manufacturing, services including tourism, information technology, and video industry, small-and-medium-scale enterprises, and oil and gas sector. The reform programmes also focus on the provisions of basic infrastructure services such as roads, water supply, and electricity; so that the prod-

⁶⁰For instance, the deficit since 1999 was as follows: in 1999- N285.1b; in 2000- N103.77b; in 2001- N221.04b; in 2002- N301.40b; and in 2003 about 500b. See "Appropriation Bill: Thorny Path to Compromise" See TELL May 3, 2004. p. 33

⁶¹See Budget Speech 2004. o p. cit.

*active capacity in the economy is enhanced to improve the delivery of basic social services such as education and health with particular emphasis on HIV/AIDS and malaria prevention and control and improved health delivery infrastructure also provides increased security for all our citizens so that they can go about their daily lives free of fear, threat, and intimidation by criminals."*⁶²

There were material differences in the Bill sent by the President to the National Assembly and the Bill approved by the National Assembly. While the President based the expected revenue from crude oil sales on \$23 per barrel, the National Assembly used \$25 per barrel as its benchmark. Apparently, because of the expected increase in government revenue, the House of Representatives increased the budget sum from N1,089 trillion submitted by the President to N1,295 trillion while the Senate on its part increased it to N1,274 trillion. At harmonisation, the figure rose to N1.302 trillion with a deficit of N187 billion. The National Assembly rejected the request of the government to raise money from the capital market. They had reasoned that the failure of the federal government to raise N150m from its Development Bonds was a clear indication that the Nigerian capital market currently lacks the depth and capacity to produce the kind of money government needed to finance the yearly capital expenditure. Rather, it was suggested that the deficit should be financed with revenue from looted funds and Excess Crude Oil Account.⁶³

Furthermore, the National Assembly introduced certain clauses in the Appropriation Bill forwarded to the President for his assent. The first clause compels the Accountant-General to release the budget sum; following the issuance of warrants and "Authorities to Incur Expenses" (AIE) by the Finance Minister. This clause was meant to ensure that all approved monies are released in order to prevent the situation in the previous years where nearly all the Ministries and Parastatals complained that the executive had failed to release their allocations for capital projects.⁶⁴ The President confirmed the situation during the presentation of the 2004 Budget to the National Assembly when he admitted that only 50 per cent of

⁶²Ibid.

⁶³See generally the 2004 Federal Government Budget Speech.

⁶⁴"The Discordant Beat of Budget 2004 Debate", *The Guardian*, Sunday, April 11, 2004, p. 18.

the Budget was released on time and that the budget failed to achieve its objectives partly because of this reason.

The second clause provided that in the event that the implementation of any of the projects intended to be undertaken cannot be completed without virement, such may only be effected with prior approval of the National Assembly. The clause is to ensure that fund approved for a particular project or overhead is not diverted to another through virement. The third clause requires the Minister of Finance to obtain a waiver from the National Assembly where, due to revenue shortfall, the amount appropriated cannot be funded. The fourth clause grants power to the National Assembly to impound heads of expenditure and thereby cut off funding for heads of expenditure for which funds have been authorised. Clause 5 empowers the AGF to create an excess revenue account with the Central Bank of Nigeria for monies earned in excess of \$25 per barrel benchmark. It was further stipulated that no fund shall be paid out of the account unless by appropriation through the National Assembly.

The President refused to give assent to the Appropriation Bill as passed by the National Assembly describing some of the clauses as "obnoxious provisions", "ultra vires, and unconstitutional". The President contended that clause 4 purports to vest executive and quasi-executive functions on the National Assembly and erode the powers of the President in relation to the implementation of the Appropriation Act. The President also faulted the Bill on the ground that it contains other extraneous matters, which cannot validly be included in an Appropriation Bill. Although the President and the National Assembly were able to reach a compromise on the Bill in order not to delay the enactment of the Appropriation Act, it is useful to consider the legality or otherwise of the clauses introduced in the Appropriating Bill.

3.1. What could be the content of an Appropriation Bill?

In our view, the clauses in the Appropriation Bill signal the reawakening of the National Assembly to its oversight functions in budget process. Each of the clauses is a definite response to a definite problem in a way that the National Assembly considers effective. Whatever the good results the attempt might achieve, it seems to us that the National Assembly has confused its legislative power to make laws generally for the peace, order, and good governance of Nigeria under section 4 of the Constitution with its power to enact the Appropriation Act under section

81 of the Constitution. The Appropriation Act is simply a formal authorisation granted to the Executive to withdraw revenue from the CRF for certain purposes. Some of the clauses; for instance, on Excess Crude Oil Account, relate to substantive matters which should be provided in a separate legislation on its own. By its very nature, an Appropriation Act is of practical importance for only one year after which it becomes of historical significance. In our view, the President seems to be correct when he said that the clause could not be validly included in an Appropriation Act.

3.2. Can the National Assembly increase Budgetary Allocation?

Since 1999, the National Assembly has consistently been increasing the budget over and above the amount proposed by the executive. For instance, in 2000; whereas the Ministry of Finance requested for N3.09 billion, the legislators allocated N8.09 billion. This trend cuts across all Ministries and parastatals.⁶⁵ The legislators have always claimed to have been motivated by the felt-need that more money is required to provide more services for the people and jumpstart the economy.⁶⁶ The practice however raises the fundamental legal question whether the National Assembly can lawfully increase the budgetary estimates proposed by the President. Nwabueze had forcefully submitted that it is *ultra vires* for the National Assembly to increase a specific head of expenditure or the overall budget beyond the amount proposed by the President. According to the eminent Jurist:

"Their (National Assembly) powers are limited to only to questioning and scrutinizing Bills sent to them by the President. Not only can the National Assembly not initiate financial legislation, it also cannot increase the total amount of the budget beyond what is proposed in the President's Appropriation Bill. This is because any increase in the total amount of the over and above the total figure in the Appropriation Bill must be regarded as having been initiated by the Assembly, not by the President. And it is undesirable that such an increase should be permitted when the

⁶⁵"Budgeting to Fail", TELL, April 17, 2000. p. 24.

⁶⁶Ibid

Assembly is not in a position to source the money to cover it."⁶⁷

The executive has not bothered to challenge the legality of the action of the National Assembly in the court, but rather had chosen to selectively implement the Appropriation Act on its own terms. One may not know for sure; but it is our guess that this factor may be partly responsible for why there is often a wide gulf between the amount approved in the Appropriation Act and the amount released by the executive.

3.3. A Bill on Budget Process

A private member's Bill was introduced by Senator Sanusi Daggash in the Senate to "provide for and regulate the Budgetary procedure for a systematic and efficient Budgetary Process. The highlights of the Bill are as follows:

- Imposes obligation on the President to submit a three year fiscal, monetary, and macro economic programme and estimates of revenue and expenditure to each house of National Assembly not later than 1st day of April in each financial year;
- Imposes obligation on the President to furnish the National Assembly with estimates submitted by Ministries, Agencies, and Parastatals. In particular, estimates of bodies established under the Constitution shall be submitted without amendments;
- Imposes obligation on the National Assembly to adopt and forward the Appropriation Bill to the President for assent before the 15th day of December of each year;
- A supplementary expenditure in a financial year shall not exceed 3 per cent of the total approved budget without prior approval of the National Assembly;
- Makes a re-allocation of funds (virement) contingent on consultations with all the affected Ministries, Agencies, and Parastatals;

⁶⁷See "Budget as Constant Headache for Fourth Republic" The Guardian, Sunday April 11, 2004.

- Imposes obligation on Ministers or Heads of Agency or Parastatals to make a yearly report to the National Assembly on the manner in which the funds from their vote are expended;
- Provides for the establishment of a Budget Committee of the National Assembly
- Provides for the establishment of Budget Office of the National Assembly.

The Bill seeks to ensure early submission of Appropriation Bill and thorough consideration by the National Assembly before the commencement of the financial year as it is done in other countries. For instance, the President of the United States of America is required to present his budget (for the fiscal year commencing on 1 October) to the Congress "on or after the first Monday in January but not later than the first Monday in February of each year."⁶⁸ This means that the U. S. congress has about eight months to deliberate and conclude discussion on the President's budget before the commencement of the financial year. While the objectives of the proposed Bill are salutary; it is remarkable that some of the matters contained in the bill are matters of procedure, which may even be better dealt with in subsidiary legislations such as Financial Regulations. For instance, is it necessary for an Act of the National Assembly to establish a Budget Committee and Budget Office for the National Assembly? The Bill also seems to be based on the assumption that the budget process would be transformed if time is prescribed in a mathematical manner for certain acts to be done without imposing any penalty. What are the consequences if the President fails to submit the appropriation bill or the National Assembly fails to pass the bill as prescribed by law? The point that is being made here is that if these matters were provided in the Constitution, they will still require the political will and maturity on the part of the political players to make them realisable. What, for instance, is the real value or utility of the constitutional provisions; which guarantee the security of office of Auditors General of the Federation and States considering the level of lack of accountability in public finance in Nigeria? Do the provisions not appear like mere window dressing?

3.4. Payments into the FA- Excess Crude Oil Account

The management of the FA has always generated serious inter-governmental fiscal

⁶⁸USA: Office of Management and Budget (OMB) Circular No. A-11 2000. p. 7.

tension in Nigeria because of the centrality and significance of the Federation Account (FA) to the survival of all the three arms of government. While section 162 makes it clear that all the revenue collected by the Government of the Federation shall be paid into the FA, the Federal government has not been faithfully implementing the provisions. The proceeds from privatisation, the loots recovered from the erstwhile President Abacha and his cohorts, and revenue from sale of oil above the benchmark; have been paid into separate accounts, which have no statutory basis. According to the Finance Minister, Mrs Ngozi Okonjo-Iweala, a whopping sum of N209 billion has accrued into the excess crude oil account as at the end of April 2004.⁶⁹ The federal government wants the money to be saved for the proverbial rainy days while the states and the local government councils want the revenue to be shared immediately.⁷⁰

While the Federal Government's intention may seem to be altruistic,⁷¹ it is submitted, the retention of the excess crude oil revenue in a separate account other than the FA is an affront on the provisions of the Constitution and therefore null and void. It is antithetical to the principle of transparency and accountability for Public funds to be managed in a manner and under the circumstances; which are not placed in the public domain and subject to legislative control. It is also wrong, in our view, for the federal government to impose its own preferences on the states and local governments. Since the bulk of the revenue would come to the federal government, the federal government could save its own share for the raining day and concede the right of other levels of government to either save or spend their own allocation based on their prerogatives. The fiscal recklessness of the federal government in the past does not give any assurance that the money is safe in its hands or will be better invested for the benefit of all the stakeholders. It is sufficient if the states, local governments and the general populace are sensitised to the need to ensure that the revenue is prudently used for capital projects, which will impact meaningfully on the lives of the people.

⁶⁹See the Guardian Newspaper Editorial "Again, the Excess Revenue Debate", The Guardian, Tuesday June 1, 2004.

⁷⁰Ibid.

⁷¹President Festus Magae of Botswana told members of the NES Group that his country has a separate fund where all proceeds from its extractive minerals and communities are deposited. Such revenues, he said are used for the country's capital projects while recurrent expenditures are funded from other revenue sources. See "Appropriation Bill: Thorny Path to Compromise" See TELL May 3, 2004, p. 32-33.

3.5. Bill on the Establishment of the Office of Accountant General of the Federation

For some time now, the 36 State Governors have been engaged in a silent war with the President over the status, functions, and mode of appointment of the Accountant-General of the Federation. The Governors are of the view that a new office of the "Accountant-General of the Federal Government" distinct from the existing Accountant-General of the Federation be created.⁷² A Bill sponsored to this effect by a member of the Senate, Mr. Kolawole Adewale, is currently pending before the Senate. There is the perception that the subsisting Accountant General of the Federation being an appointee of the federal government, is pandering to the wishes of the federal government instead of protecting the interests of all the federating units that make up Nigeria.⁷³ While not denying the need to remove suspicion about the loyalty and fairness of the Accountant General of the Federation, some have considered the proposal for the Accountant General of the Federation to be "too radical and clumsy." It has been argued that it is sufficient if the office of the Accountant General of the Federation is detached from the direct influence of the Presidency and made accountable to the National Assembly.⁷⁴

Whichever way the controversy is eventually resolved, there seems to be a gradual realisation of the need to make a clear distinction between "Federal Institutions" and "Federal Government's Institutions". The former belongs to all the federating units and should work towards promotion of the interests of all the federating units while the latter belongs exclusively to the federal government and work towards promotion of the interests of the federal government alone. Based on the above, all the Federal Executive Bodies established by the Constitutions ideally should not be constituted by the federal government alone. The states should be able to directly nominate their own representatives on such bodies who will monitor their interests and act as check to the arbitrary exercise of powers of the body if and when the need arises. More will be said on this in our discussion of the issue that follows.

⁷²See "Strengthening the Office of the Accountant-General", *The Guardian*, Thursday, April 29, 2004, p. 16.

⁷³*Ibid.*

⁷⁴*Ibid.*

3.6. Management of the FA- Stoppage of Allocation to some Local Governments

Another issue that is generating controversy is the manner in which the federal government has been managing the FA. Although the Constitution unequivocally states that the FA shall be maintained by the "Federation", which is defined in section 318 of the 1999 Constitution as the "Federal Republic of Nigeria",⁷⁵ the Allocation of Revenue (Federation Account, etc.) Act⁷⁶ vests the power to distribute the revenue in the FA exclusively in the federal government thus giving the false impression that the states and local governments are donees of the revenue from the FA.⁷⁷ The federal government had used its vantage position over the years to introduce certain practices in the management of the FA, to the detriment of other beneficiaries of the account.⁷⁸ Notwithstanding, the beneficiaries of the FA have a settled expectation of a regular stream of revenue because of the entrenchment of their rights to share in the revenue from the account in the Constitution.⁷⁹ The expectation of the local government councils in five states⁸⁰ was however violently shaken, recently, when the President of the Federal Republic of Nigeria directed the Ministry of Finance to withhold their statutory allocations.⁸¹

The ultimate question, which is bound to confront us is whether the management of the FA exclusively by the federal government is constitutional. Section 162(3) of the Constitution which vests the National Assembly with the power to, *inter alia*, prescribe the "terms" and "manner" of allocation to the beneficiaries of the revenue in the FA⁸² should not be read in isolation. If the section is read in conjunction with the provisions of section 162(1), it will be clear that the power of the National Assembly in this regard is not absolute. The National Assembly, in the exercise of its power, cannot prescribe terms that are inconsistent with the

⁷⁵See section 318 CFRN 1999.

⁷⁶Cap. 16 Laws of Federation of Nigeria (L. F. N.), 1990 as amended by Allocation of Revenue (Federation Account, etc.) Act No. 106 of 1992.

⁷⁷The Supreme Court held in the recent celebrated case of A. G. Federation and A. G. Abia State & 35 Ors. [2002] 6 N. W. L. R. (Pt.764) 542 popularly known as "the Resource Control Case" that the federal government is a trustee of the revenue in the FA and that like all trustees, it must account for the revenue to all the beneficiaries.

⁷⁸For instance, certain revenues were being deducted from the FA as first line charges before distribution of the residue among the three levels of governments. Such deductions were recently declared null and void in A.G. Federation and A. G. Abia State & 35 Ors. (Supra).

⁷⁹See section 162(3) of the 1999 Constitution

⁸⁰Ebonyi, Katsina, Lagos, Nasarawa, and Niger States.

⁸¹See part 1.0 of the paper *infra*.

⁸²See section 162(3) CFRN 1999.

Constitution. It is remarkable to note therefore that the terms prescribed by both the Allocation of Revenue (Federation Account, etc) Act have turned the FA into the Federal Government's Account instead of a joint account of the federating units, as envisaged by section 162(1). Against this background, it is submitted that it is *ultra vires* for the National Assembly to exclusively vest the management of the FA in the Federal Government of Nigeria. To that extent, the Allocation of Revenue Act is inconsistent with the provisions of the Constitution and therefore null and void. The point that is being made is that the FA, being an account of the "federation" ought to be jointly managed by all the stakeholders and not by an agency composed of the nominees of the President.

3.7. Attempt by the Federal Government to Control of Allocation to State and Local Governments

The 1999 Constitution directs the states to establish a democratic system of local government under their Law and vest the local governments with the functions listed in the Fourth Schedule.⁸³ In order to guarantee that the local governments have access to adequate revenue to perform their functions, the Constitution makes the local government councils co-beneficiaries of the revenue in the FA. Section 162(5) of the Constitution provides that allocation shall be made through the states. The section is hereby reproduced for ease of reference:

S.162(5):

*"The amount standing to the credit of the local government councils in the Federation Account shall be allocated to the states for the benefits of their local government councils on such terms and in such manner as may be prescribed by the National Assembly."*⁸⁴

Furthermore, the Constitution mandates each state to "maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations from the Federation Account and from the Government of the States for the benefit of their local government councils."⁸⁵ Hence, allocation for local

⁸³See section 7 and the Fourth Schedule CFRN 1999.

⁸⁴See section 162(5) CFRN 1999

⁸⁵See section 162(5) CFRN 1999

government is made to the states while the states thereafter distribute the revenue in the State Joint Local Government Account among the local governments based on "such terms and in such manner as may be prescribed by the House of Assembly of a State."⁸⁶

Unfortunately, the inter-fiscal relationship between the states and the local government councils has also been characterised by crisis of confidence and distrust. Most of the states have been accused of fiscal oppression of their local governments by mismanaging the revenue meant for the local governments. For instance, most states are accused of making different kinds of deductions from the allocation for their local governments while little or nothing is left for the local governments to perform their functions. To make the matter worse, most states do not even have a State Joint Local Government Account established by Law. In order to address some of these problems, the local governments have been clamouring that their allocations from the FA should be made directly to each local government. The attempt by the Federal Government to heed this call was recently declared unconstitutional, null, and void by the Supreme Court in the case of *Att.-Gen., Federation v Att.-Gen., Abia State & 35 Ors.*⁸⁷

The Federal Government has been unrelenting in its attempt to address the perceived problems about State and local government fiscal relationship. An executive bill was introduced "to prescribe for allocation of revenue to the credit of local government councils and area councils in the federation account and for other matters connected therewith". The Bill contains the following highlights, among other things:

- Imposes an obligation on each state to establish a State Joint Local Government Account as mandated by the Constitution,
- Prohibits the States from altering, deducting, or re-allocating funds in the State Joint Local Government Account,
- Before the allocation of local government's share is made to the states, the states must satisfy the Accountant-General of the Federation that the previous allocation has been accounted.

⁸⁶See section 162(8) CFRN 1999

⁸⁷(2002) 6 N. W. L. R. (Pt. 764) p. 542

- Makes any allocation that is not released to lapse and be credited to the FA.

In sum, the main objectives of the Bill are to ensure that the revenue allocated to states for the benefits of the local governments are not deducted, withheld or mismanaged. Predictably, the Bill was vigorously opposed by all the states in the federation as an unnecessary intrusion in state-local government relationship. It is contended, rightly in our view, that the matters covered by the Bill are within the residual power of the states and therefore *ultra vires* for the National Assembly. Since allocation is not made directly to the local governments, it is not the concern of the National Assembly how a state distributes the revenue among its local government councils once it is done in accordance with the law of the state. Also, the power of the National Assembly to prescribe the terms and manner of allocation to the states under Section 162(5) cannot be used to make the National Assembly the gatekeeper of the financial affairs of the local governments. How could the states be required to furnish evidence of disbursement to the Accountant-General of the Federation when they have their own Accountant-General of the State? This is a responsibility of the House of Assembly of each State. The fact that the House of Assembly has rightly or wrongly refused to make the appropriate law in this regard is not sufficient for the National Assembly to usurp that power. The National Assembly seems to have misconceived the true import of its power to prescribe the "terms" and "manner" of allocation to the states for the benefit of their local government councils under section 162(5). In our view, while the power may be used, for instance, to prescribe when allocations shall be made, such as monthly, quarterly, etc, it cannot be used under any guise to monitor how a state distributes or utilizes the revenue allocated to it for the benefit of its local government councils. Whatever is paid into a State's Joint Local Government Account (be it from the Federation Account or the Government of the State) belongs to all the local government councils in the state. No individual local government council has a right to any portion of the amount in the Account until there has been a distribution by the state in the manner prescribed by the House of Assembly of the State.

4.0. Conclusion

The above discussion has taken us through the various constitutional, statutory, and administrative frameworks for budget process in Nigeria. It is clear from the discussion that the main problem is not due to the absence of appropriate laws but lack of enforcement of the existing one at different stages. The question now

is if we fail to enforce the existing laws, what is the assurance that the new laws being proposed will be implemented. For instance, several Commissions of Enquiries have been set up in the past at huge costs to probe the finances of certain institutions. Regrettably, the reports of such Commissions are rarely made public and acted upon. Therefore, unless the enforcement machinery of the laws relating to the budget process is reinvigorated, the attainment of the laudable objectives of some of the reforms being introduced or proposed may be limited.

This is however not to deny the fact that a few laws may be required to kick-start or strengthen the process. It is remarkable however that the thrust of the various reforms by the executive and legislature have been geared towards ensuring that:

- (i) all revenue is paid into the FA and subject to legislative control,
- (ii) speedy passage of the Appropriation Bill and
- (iii) speedy release of fund.

It is suggested that the same interests should be devoted to development of an efficient system of financial management of public fund at all levels in all government ministries, institutions, and offices. This is the critical stage where public revenue is usually siphoned into private accounts through mismanagement. More particularly, the provisions of the Financial Regulations should be strictly enforced while the Chief Accounting Officers of Ministries should be held strictly accountable as prescribed by the regulations. This will require the cooperation of the Executive and National Assembly and most importantly, their commitment, and political will towards achieving greater degrees of transparency and accountability in the budget process. Finally, the state and local governments should also initiate measures to achieve transparency and accountability in their budget process. However, this is primarily the task for the House of Assembly of each State and not the Federal government. The people must realise that no matter how large and efficient the federal government's budget becomes, there are certain things that will remain unchanged at the state and local government levels. Hence, everyone is enjoined to take enlightened interest in the budget process at those levels in order to make government activities more relevant to their lives.