

Appropriation Bills: A Constitutional Check on Public Fund Spending

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ABSTRACT: *Appropriation bills when passed into law become appropriation law or Act and this law or Act is widely known as the annual budget of a state or federation. Appropriation laws act as an effective check on public fund spending, the passage of appropriation bills or budgets into law empowers the executive government to have a fettered access to the Consolidated Revenue Fund (CRF) of a state or of the federation of Nigeria. Annual budgets are so important to every sphere of government because it sets the yearly goals of government by specifying areas of priority attention which should receive a significant amount of money contained in the said budget. Therefore, appropriation bills are tools used to fast track development in designated areas such as health, education and security. It is submitted that such bills should be made child friendly because children are great assets in terms of continuity of nations, labour force and consistent leadership. The contents of an appropriation bill would help in attracting development partners like UNICEF as development partners. The release of counter part fund by such a development partner would facilitate development especially in the area of children education and health.*

I. INTRODUCTION

The word “Appropriation”¹ connotes usage or to put to use. Appropriation bills therefore are bills which a legislative house passes in order to enable the executive branch of government to put public money to official use. Public money² is usually employed for common good. Public fund is therefore, for common good. A governmental policy formulated on the basis of this principle and strictly implemented would witness a versatile and far-reaching developmental efforts that portend good for the development of Nigeria and the well being of the people. Appropriation bills provide the foundation on which government spending is founded without which the executive branch of government has only a restricted access to the fund in the CRF which contains the monies owned by each tier of the federating units jointly with the local government council on one hand and the Federal Government, on the other hand. An Appropriation bill, otherwise known as a money bill and more particularly referred to the budget provides the financial template on an annual basis which the government is bound to follow strictly after the passage of the bill or the approval of the budget by the legislature. When the budget fund is not sufficient enough to sponsor all laid down governments programmes and projects, there arises a budget deficit³ in which case a supplementary budget is required to be sent into the legislative chamber for a supplementary passage otherwise known as supplementary budget approval. In a situation where the released budgeted fund takes care of all government programmes and projects for an annual period with a balance of the money unspent for the purpose for which it has been released, budget surplus arises. In this case the unspent money is expected to be paid back into the state or government treasury. In this way, a constitutional check on public fund and its spending is maintained by the relevant authorities.

II. THE LEGISLATIVE ROLE IN CHECKING PUBLIC EXPENDITURE

The CFRN, 1999, as amended empowers the legislative arm of government in Nigeria to play a relevant role in checking the expenditure of public fund in Nigeria⁴. By this very constitutional arrangement,

¹ It also means the making of a thing the property of a person. See L. Rutherford and S. Bone, Osborns Concise Law Dictionary, 8th ed., London, Sweet and Maxwell, 1993, 29.

² Public money⁷ refers to the money or fund contained in the Consolidation Revenue Fund, the Federation Account or Contingency fund. It also extends to the recent Sovereign Wealth Fund.

³ Budget deficit reveals a poor management of the budgeted fund. This position is taken on the assumption that a government is supposed to keep itself within the permissible range of the budget estimate approved by an appropriation Act.

⁴ S. 59 makes provision for the passage of money bills known as budgets into law. The essence of making a budget and presented it to the legislature for scrutiny and possible passage is to help the law making body (the legislature) to check the spending of public fund by the executive arm of government and ensure that public fund, which is a common fund is used or employed for common good.

government departments prepare their budgets for the running of government in a fiscal year and present them in a consolidated but detailed form to the legislature for their approval before money could be disbursed from the Consolidated Revenue Fund of the relevant structure of government. On the side of the Federal Government, money is withdrawn from the Consolidated Revenue Fund (CRF) after approval of the National assembly by means of the passage of the budget brought before it by the Federal Government of Nigeria. The states governments, on their own side, withdraw money from their own states' CRFs after approval of their budgets by their respective Houses of Assembly.

The provision for budgeting in the Constitution is a good one as it relates to good management of public fund⁵. It makes the executive arm of government to put its house, on financial matters, in order before approaching the legislature for the approval of their planned monetary expenditure. Both the Federal and States Governments prepare grounds for budget presentation at the beginning of a fiscal year.

The legislature may approve, alter or reject a budget presented before it on a reasonable and legal ground. In a situation where the legislature does not have any issue⁶ arising from the budget presented before it to resolve, it passes the budget as presented; but where it raises an issue relations to the budget, in resolving the issue, it may decide to alter the budget to reflect their position on it. If however, the issue is not resolved, the legislators may reject the budget or refuse to pass it. Expectedly, the consequence of rejection of an appropriate bill is the financial strangulation of government⁷, be it on a federal level or on a state level, thereby leading to the collapse of government projects and policies, putting a full stop to both capital and recurrent expenditure and a great hardship on the people. In order to avert this seeming calamity, the CFRN, 1999⁸, as amended made provision in Section 82 as follows:

If the Appropriation Bill in respect of any financial year has not been passed into law by the beginning of the financial years, the President may authorize the withdrawal of money from the Consolidated Revenue Fund of the Federation for the purpose of meeting expenditure necessary to carry on the services of the government of the Federation for a period not exceeding six months or until the coming into operation of the appropriate Act whichever is earlier⁹.

The above provision is with the aim of salvaging the ugly situation that may ensue in the event of the rejection of an appropriate bill or its delay by the legislature. It is submitted that the authorization in Section 82 is a legislative role assigned to the President in the event of a legislative blockade of his projects and policies and is a kind of a constitutional life line thrown into the sea of governmental conflict between the legislature and the executive which the executive arm of government grabs in order to evade financial suffocation and drowning. It is to be noted, however, that the proviso to Section 82 regulates the way the said authorization is to be made. This proviso provides an effective check on the withdrawal states as follows:

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

Section 82 and its proviso do not give the impression that the President can circumvent Section 59 which is on the passage of money bills into Appropriation Acts. He must go through Section 59 but where there is a conflict and the resolution of the conflict relating to appropriation bills is delayed or made difficult by the outright

⁵ Although budgeting alone acts as a guide for good management of funds, it does not provide the guarantee that the money released to fund the budget would be judiciously and prudently used. The recent grouse of the National Assembly with the Federal Government over the 2012 budget implementation came within the public knowledge when the law makers demanded that the Federal Executive should account for the budget expenditure of 2012 before they would pass the 2013 Appropriation Bill.

⁶ Where there is an issue, it must be resolved by the general sitting of a legislative house following laid down procedures. This view is based on the authority of *A.G. Bendel v. A.G. Federation (1982) 3 NCLR, 1*.

⁷ The strangulation of the government by means of financial starvation invariably leads to a negative impact on the people.

⁸ S. 59 CFRN, 1999, as amended is tied to S. 82 of the same Constitution. Therefore, if the government cannot give money for public expenditure from the CRF through S. 52; it can go through Section 82 for a momentary access to the CRF.

⁹ A similar provision to S. 82 is found in S. 122, CFRN, 1999, as amended. While S. 82 empowers the President to authorize withdrawal from the CFR in the event of delay or rejection of his appropriation bill; S. 122 empowers state Governors to authorize such a withdrawal when faced with similar circumstances.

Rejection¹⁰ of the bill by the legislature, in this case the National Assembly then the President can go through Section 82 to get money to keep the executive government running for a specified period of time. However, Section 82 does not provide a permanent solution to the problem of sourcing money from the CRF to run the government, its provision in relation to the President's authorization of release of fund is limited to "six months or until the coming into operation of the Appropriation Act, whichever is the earlier". Moreover the withdrawal subject to the authorization of the President under Section 82 must be "proportionate to the total amount so authorized for the immediately preceding financial year". What this entails is that the budget of the previous year which the National Assembly passed into an Appropriation Act becomes re-activated under Section 82, to guide the authorization of the release of fund from the CFR of the Federation. This re-activation or resurrection, as earlier stated, is for a very limited life span¹¹. It therefore does not replace the vital legislative role of checking public fund expenditure by the executive arm of government. It is submitted, that the contemplation of the CFRN, 1999, as amended, is not to despise its own provision in Section 59, by its inclusion of Section 82 in its corporate text but rather to avoid making the people of Nigeria to suffer unnecessarily by not getting the dividends of democracy because "two elephants", the legislature and the executive are fighting over budget harmonization or on any other issue¹²

III. PRECAUTIONARY MEASURES IN THE BUDGET PROCESS

In order to avoid unnecessary conflicts between the legislative and the executive arms of government, there is need to take precautionary measures so as to ensure a smooth and easy passage of appropriation bills by the legislature. It is pertinent to note at this point that both the legislature and the executive are manned by the people's representatives. Therefore, the budget of any fiscal year should be people-oriented. If the budget provisions do not take adequate care of major needs of the society, it would be fit to be thrown back to the makers to have a second look at it before representing it to the legislature for passage into law. The major needs of the Nigerian society include health, education, security, employment, essential amenities, agriculture and aviation needs. Moreover, in the bid to supply these needs, there is an understandable expectation that the needs of some class of person in the society like the children and the woman should be given priority attention in the making of budgets.

In Nigeria there are similarities in the making of a budgets or the budget cycle. These similarities relate to the setting up of budget committee which meets once every year to review budget related matter from the ministries, departments and agencies (MDA)¹³ of the state that established it and it functions mainly to consider matters arising from the submission of the MDA's various financial needs based on call circulars sent out for that purpose and subject to the MDA's defense of their proposed budgets before the budget committee. Thereafter, the budget proposals are presented to the executive council of a state for review and presented to the legislature in the form of an appropriation bill which is to be passed into law in order to enable the government of the state have access to the state's CRF. This practice is a requirement of the CFRN, 1999¹⁴, as amended

¹⁰ It is really a worrisome observation that the CFRN, 1999, as amended failed to stipulate the time limit within which an appropriation bill, whether presented before the National Assembly or before a State House of Assembly, shall be passed into law in each fiscal year. If the time limit within which a judge must give judgment in a matter at the conclusion of evidence could be stated expressly, it is submitted that the legislative houses in Nigeria should be given a time limit within which they should consider and pass an appropriation bill in a fiscal year.

¹¹ A question arising from the salvaging role of S. 82, CFRN, 1999, as amended is, "What happens if after the six month time frame given by the said S. 82 has elapsed and yet the National Assembly or a State House of Assembly has not passed an appropriation bill into an Act or Law, respectively?" The CFRN, 1999, as amended is silent on the matter but if such a matter arises, it could be referred to the Supreme Court of Nigeria for an advisory opinion which it is submitted respectfully, that the court can decide to elongate the period by some months based on the understanding that the contemplation of the CFRN, 1999, as amended is to avoid financial strangulation.

¹² The aspect of harmonization of budget is an important one that does not need any form of triviality. However, budget harmonization should not be confused with budget balkanization or tinkering with the budget on questionable ground. The budget is first and first the budget of the executive for the good of the people of Nigeria. The legislature can scrutinize it in order to ensure that no loophole for financial drainage is allowed in the budget but that does not mean over bloating the total sum fixed by the executive to be spent a fiscal year on questionable ground.

¹³ MDAs are key players in the budget articulation and formulation. However, the call circulars sent to them in the middle of every year would serve public interests better if they are sent earlier than that time, say, in March of a subsisting financial year.

¹⁴ See s. 59; s. 121, CFRN 1999, as amended.

provides that, “the Governor shall cause to be prepared and laid before the house of assemble at any time before the commencement of each financial year estimates of the revenues and expenditure of the state for the next financial year”. Furthermore, it provides that:

The heads of the expenditure contained in the estimates, other then expenditure charged upon the Constitution, shall be in a bill to be known as an Appropriation Bill, providing for the issue from the consolidated revenue fund of the state of the sums necessary to meet that expenditure and the a appropriation of these sums of the purpose specified therein.

The submission of an appropriation bill to the legislature enables it to play a moderating role in the budget cycle. It does not give it the impetus to tinker with the bill otherwise, the Governor would refuse to give his accent to the bill. Where it passes the bill into law, the Governor’s accent¹⁵ given to the bill, clothes it with the force of law. One fact that stands out clearly from section 121(2) CFRN, 1999, as amended, is that the budget money when released from the CRF must be used for what it is meant for. It is submitted that this is the meaning to be assigned to the clause, “appropriation of those sums for the purpose specified therein”. This clause ensures that the sums assigned to specific ministries, departments and agencies (MDA) of the government shall be released to them by the Accountant-General of a state in Nigeria on the authorization of the Governor. It is, however, to be noted that responsibility for non-release of the sum or non-use of the sum released for the purpose specified in the appropriation law lies on the shoulders of the Governor and of all those who are involved in the in the misuse of the released budget sum.

The nature of an appropriation law would show the priority of government in the spending of public fund. Budgets would serve the interest of the public better if relevant bodies representing the public are made to partner with government in the formulation of the budget before its presentation to the legislature for passage into law and to the Government for assent. Budgets formulation and articulation without involving the public would only provide a parochial vision to the government of a state. With the people’s involvement in such exercises, a propelling vision of hope would be caught by all interested parties or stakeholders and this vision would influence common commitment to the realization of the vision of hope as represented in the budget and significantly facilitates the implementation of a budget¹⁶.

A salient check in relation to the implementation of a budget is budget review. Without this review the performance of a budget will not be readily known by the stake holders. Therefore it is not out of place to involve stakeholders in a forum which shall be aimed at a general review of budget performance with necessary inputs made by stakeholders on the way forward with regard to the achievement of a hundred percent implementation of the budget. Where it is found out for instance, that a stakeholder in the budget¹⁷ matter is not benefitting from the budget implementation, efforts should be geared immediately towards the resolution of the problem. For instance, the local people of a state constitute a formidable stake holder in the budget matters and as a result, if during the stake holders forum, it is discovered that implementation of the budget of a state has not so far favoured the people as regards meeting their demands, the forum calls the attention of the state government to the seeming neglect. This review of the forum therefore serves a veritable instrument of proper budget implementation. However, for a budget to be fully implemented, regular release of fund by the Ministry of Finance to the various MDA’S according to the envelopes¹⁸ sent to them by the state government must be encouraged by the Governor for the purpose specified in the budget. Moreover there can be no easy way to effect the full implementation of a budget if there is no monitoring process put in place to monitor the release of budget sum and its expenditure. The sincerity of government to implementing a budget fully is discerned from what it does with the monitoring aspect of the budget implementation. Absence of monitoring mechanism in a state shows an attitude of levity on the part of the government in fiscal dealings

Furthermore, the monitoring of budget implementation by politicians rather than the experts in financial matters is like placing a square peg in a round hole. While experts may be willing to make their finding public with respect to the level of a budget implementation in a state; the politicians may not be willing and may

¹⁵. No law can be passed in Nigeria without this assent, even if the passage relates only to amendment except as stated in the in the CFRN, 1999, as amended. See ss. 58 and 100.

¹⁶ The vision of hope shall have a greater chance of actualization where the government of state transforms it into a governmental policy. Commitment to the vision, therefore becomes commitment to the policy. The advantage of this development over a practice whereby the budget is exclusively made by the government is that all stake holders including the ministries tie up to the policy, therefore making its actualization easier.

¹⁷ Getting a hundred percent realization of budget is a great achievement. This feat cures a problematic aspect of an average budget which is budget deficit. A government that achieves the feat of 100% budget implement will go long way in touching the lives of the local people of a state.

¹⁸ An envelope comprises money allocated to various sectors (MDA) depending on their priorities and the extent of their previous budget implementations

not allow access to their review reports¹⁹. On the other hand, the use of civil servants to monitor a state budget may be counter productive. The reason for this assertion is based on the fact that the officers that monitor the budget implementation may come from the Auditor-General's or the Accountant-General's office who as key figures in the general administration of a state may be negatively influenced by the Governor to dance to the tune of the state government.

It is submitted that there can be no meaningful commitment to full budget implementation without the creation of independent financial monitoring bodies to monitor the budget. There is need, therefore, for an independent fiscal responsibility commission and an independent public procurement commission. Furthermore it is to be noted that without enabling laws²⁰, these commissions cannot be brought into being. The commissions should be mandated by their enabling laws to send out officers to independently monitor the level of fiscal responsibility of the government of a state and level of commitment to transparent and holistic procurement of materials needed for the full implementation of a budget²¹. In procurement matters, all procurement process and approval should be made to go through the commission in charge which shall be made to carve out departments to be known as then departments of due process.

The budget of hope shall fare well if it serves as a development law which is tenaciously enforced jointly by the government on hand and the independent monitoring commissions (IMC) in the other hand²². This tenacious enforcement helps in the stability of governance in a state; predictability of governmental actions; makes a valuable social and economic impact; enhances performance and propels fiscal discipline. The IMC should be made to play a complementary role to that of the Accountant-General and Auditor-General. The role of the Accountant-General and Auditor-General is an existing feedback process in relation to budget implementation and the submission of audited accounting statement to the government before the next budget is presented to the legislature for passage into law, the relevance of the IMC to the veracity of the statement cannot be over emphasized. The above assertion is made with respect to making the spirit behind the CFRN, 1999 as amended²³, is to employ public fund for common good. In other words public fund is not for private use. Where this becomes the case, it amounts to embezzlement or corruption which is punishable by the law.

The budget scheme provides the legislative arm of government at first sight how the executive attends to spend public money. Though the governor of a state is elected by the people and acts to some extents as the trustee²⁴ of people, the more generally acceptable representatives of the people of a state are the legislators. Therefore the legislator as the representatives of the people examines the budget in line with the possibility of the budget touching all the sectors of the economy on the one hand and the local people on the other hand. This, it is to be submitted, is an initial independent monitoring of a budget. This is done before the transmission of a budget bill into a budget law²⁵. The monitoring by the IMC is such that comes into play when the budget law has been passed and is focused on implementation rather than on the contents of a budget.

The word "monitoring" has been defined by the Supreme Court in *A.G Abia v .A.G Federation*²⁶. The court said that the word monitoring conveys some element of policing the state government. The word means to watch or to check. A budget also refers to the appropriation act made by the federal legislature and in Nigeria is made by the National Assembly. From the foregoing, monitoring for the budget means checking the budgets to see that it meets the needs of the local people and also checking to see that the budget is fully implemented.

The Promotion of Children Welfare through Budgeting in Nigeria

Children²⁷ are among the venerable groups of persons not only in Nigeria but also in the world. In biological family, children's needs are given priority attention because of their family standing and value. Value

¹⁹ This alludes to the corruption which is allowed in any system can eat deep into fabrics of societal well being at the expense of protecting the financial interests of those in the corridors of power.

²⁰ The enabling laws are the fiscal responsibility and the public procurement law.

²¹ For instance, in the implementation of a particular developmental projects e.g the provision of water, the procurement of all that will be need to execute the project is to be monitored by the independent public procurement commission.

²² The essence of a budget is to define goals, fix costs in order to ensure that financial activities are in line with approved financial framework. A good budget must be simple accurate, transparent, equitable and sensitive.

²³ See s.59 and s.100, CFRN, 1999, As amended.

²⁴ For instance, under the Land Use Act of 1978, the Governor holds the entire land in his state in trust for the people.

²⁵ A budget that has a low vote for health and education for instance, cannot be said to protect the health right and education right of the child.

²⁶ (2006) NSCQLR, vol. 28, pp. 171, 172.

for children's welfare would make any responsible and sensitive government to reflect this welfare in its budget planning, budget formulation and budget implementation. The needs of children when met lead to the proper actualization of the children welfare. A child is generally defined as person under 18 years in Nigeria. For instance legal responsibility starts from 18 years of age. The needs of a child are captured by law and given to him or her by law as rights which must be protected by government. These needs or rights include basic education, health, food and protection. A Child-friendly budget is one that has particular interest on children. Such a budget encourages and enhances children's free education, immunization, provision of adequate food and water, provision against emergencies such as flood and fire. The rights of the child are captured in the United Nations Conventions on the right of the Child. By this commendable international legal regime, nations are encouraged to adopt or come up with Acts on child's right otherwise known as child's right Acts aimed at the promotion and protection of the rights of the child.

Nigeria has passed the child's right in 2003. The passage is a laudable expression of the commitment of the Nigerian Government to the welfare of the child. A transparent way of actualizing this commitment is to make the budgets on both federal and state levels to give priority attention to the realization of child's right²⁸ for example health right.

Section 1, sub-sections (1) and section 2 (1) and (2) of the Nigerian child Act 2003 provide as follows:

1 (1) In every action concerning a child, whether undertaken by an individuals, public or private body, institution or services, court of law or administrative authority, the best interest of the child shall be the primary consideration.

2 (1) A child shall be given such protection and care as is necessary for the well-being of the child, taking into account the rights and duties of the child parents, legal guardians, or other individuals, institutions, services, agencies, organizations or bodies legally responsible for the child.

(2) every person, institution, institution, service, agency, organization and body responsible for the care or protection of children shall conform with the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision.

From the foregoing, it could be established with ease that governmental agencies and institutions including the ministries, departments and agencies of government in Nigeria are mandated by the Child's Rights Act to make the care and protection²⁹ of the child to conform to the standards established by appropriate authorities.

IV. CONCLUSION

It has been clearly made explicit in this article that budgeting involves the setting of goals or standards. A budget that could be termed as child-friendly must contain goals on the actualization of children primary needs which generally takes care of children welfare. It is submitted that the level of commitment to the children by the government would pay off positively as the state and federations store a well fed, healthy and highly motivated children who would grow up to provide the labour needs of both the states and the federation. Apart from this, the level of commitment of these children to both states and national ideas would significantly appreciate to the extent that the problem of patriotism would be solved, hence making a child-friendly budget a tool for state and national development. This reveals glaringly the structural power of the law, that is, that the law would be used as a veritable tool for behaviour modification. It is therefore clear from this fact, that the conception of the law as only constituting coercion and the application of sanction is a restrictive conception. Law could be applied for various purposes in order to meet various ends and the appropriation law is no exception. It is pertinent to state, at this point, that priority attention should be given to children's welfare in Nigeria by the instrumentality of the budget or the appropriation law³⁰. The percentage of budget fund allocated to children's welfare shows whether the budget is child-friendly or not. On this note it is recommended that the annual budgets of governments in Nigeria should devote at least thirty percent of the entire budget sum to improving the welfare of children.

²⁷ Children are protected by the law like the Young Persons Act and in criminal law, a selective protection is given to children under 7 and 12 years of age. While it recognized that a child under 7 cannot commit a crime; it maintains that a child under 12 cannot commit certain offences like having carnal knowledge of a woman.

²⁸ The giving of attention to the children by the budget is to be done by allocating sufficient fund to cater for children's needs which the budget reflects at first glance

²⁹ A budget that has a low vote for health and education, for instance, cannot be said to protect the health right and the education right of the children. A review of the budgets of the federal government of the various states of Nigerian would show whether they are child-friendly budgets or not.

³⁰ Since the appropriation law is enacted on yearly basis, there is need for the review of the budget of the previous year with the aim of making improvement as it relates to children welfare in the next budget.