

Powers of the Executive and Legislature in Budget Making Process in Nigeria: An Overview

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Abstract

Friction between the executive and legislative arms of the government is a common phenomenon in modern democracies the world over. Because of its attendant consequences, the budget process is often a cause of significant friction between the legislature and executive arms. In Nigeria, the issue that calls for determination has been the extent of powers of the legislature in matters of budget formulation and approval. For years, this dispute has remained unabated and none of the parties has summoned the courage to approach the courts for its interpretation. This controversy, once again, has been in the front burner, resulting in inordinate delay in the passage of the 2016 nation's Budget. The executive arm of the government is vehement in objecting to any amendments, modifications and alterations made to the annual budgetary estimates prepared by the executive and placed before the National Assembly as it affects various ministries and government departments. In other words, it is their take that the function of the legislative arm is simply to 'rubber stamp' the budget estimates. Politicians, legislators and lawyers are divided on this issue. This paper examines the powers and functions of both arms of government but more especially the legislature on Appropriation Bills. We examined a critical aspect of the controversy that surrounded the delay in the passage of the 2016 Budget because of the importance it has for future budgetary processes. We argue in this article that in the interest of allowing inputs of trade unions, NGOs and other stakeholders through the opportunities provided by Public Hearings, it is in the larger public interest to sustain the operation of the current legal framework which supports, in our humble opinion, the power of the National Assembly to alter the budgetary estimates submitted by the executive, either marginally or fundamentally, as the National Assembly may deem fit. We support our argument with an overview of international practices, which vary, depending only on constitutional or legal provisions in individual countries. A brief discussion on the relationship which exists in both arms of government, the causes and effect of frictions between them are also considered.

Keywords: conflicts, executive arm, legislative arm, powers, budgetary estimates, appropriation bills.

1. Introduction

(a) The Legislature: The legislature plays a pivotal role in the process of governance in the democratic political systems of today's world, Nigeria is no exception. Many of the legislatures the world over follow the design of the British Parliament, the so-called Westminster model.¹ In the Westminster system, legislative power resides in a popularly elected parliament, composed of one or two chambers. Under that system, the majority party or a coalition of parties, agree to form a government of the day (often referred to as parliamentary system). In this system, there is to some extent fusion of executive and legislative powers. In systems based on separation of powers, legislative and executive powers are shared between two arms whose principal officers are elected. The United States of America is the best example of a separated system. However, many countries follow formal constitutions modeled on that of the United States (often referred to as presidential system) and Nigeria adopted this system since 1979.²

Most modern governments have a bicameral, or two-house, legislature: the lower house and the upper house. The lower house is generally elected on the basis of direct representation; and the upper house commonly on a basis either of indirect representation or of direct representation limited to certain occupational, territorial, or hereditary categories. The traditional theoretical justification for an upper house is that it can exercise moderation and delay on legislation by the lower house and thus restrain the effects of impulsive or excessive fluctuations of public opinion. A few governments, however, have unicameral, or single-house, legislatures.³

The various legislatures throughout the world are known by different nomenclatures, such as Congress, Parliament, Knesset, Diet, and Assembly. Most are limited in their powers by the constitution or organic law of

¹Akindele, S.T., "Democracy, Governance, Legislative Challenges and Impediments in Nigeria, 1999-2011". Available at <http://ccsnet.org/journal/index.php/jpl/article/download/17431/11629>. (Accessed: August 30, 2016).

² See generally, the Constitutions of the Federal Republic of Nigeria, 1979 and 1999 Cap C23, Laws of the Federation of Nigeria 2004 (now Laws of the Federation of Nigeria updated, 2010) respectively. Hereinafter referred to as the Constitution.

³ Tajudeen, I.O., "Towards a friction-free relationship between the executive and legislature" *Nnamdi Azikiwe University, Awka Journal of Public and Private Law*, Vol. 5, September, 2013, 262.

the government of which they are a part. The enactments of the U.S. Congress, for example, can be vetoed by the President, and the Congress must approve by a two-thirds majority any bill it wishes to pass despite a presidential veto. The British Parliament, on the other hand, chooses its own Prime Minister and cabinet, who are ultimately responsible to it for all their administrative actions. The duties of the legislature extend to law-making, exercising oversight functions on the activities of the executive, checking the excesses of the executive and authorizing financial expenditures. All other functions that are performed by the parliaments all over the world are fundamentally to assist the parliament in its law-making functions.

(b) The Executive: The executive arm of government is made up of the president and his ministers. Their main function is that of administering and enforcing the country's laws and upholding the Constitution at all times.¹ The executive functions through government Ministries, Departments and Agencies (MDAs). The Executive arm agencies, departments, and other entities are all bureaucracies – large organizations composed of clerks, administrators, and other workers. Executive branch bureaucracies disperse funds, manage programs, provide services, and enforce regulations and laws. They also make rules that have the force of law behind them. The executive supervises the implementation of laws by directing administrative agencies and ministries. The executive also exerts substantial influence on the economic life of the nation through its budgetary and taxing proposals. The appointive powers of the president include the freedom to spend substantial sums of money to facilitate the administration of the government and the exercise of his constitutional powers.

The executive has power to negotiate treaties with the advice and consent of the Senate. As Commander-in-Chief of the Armed Forces of the federation, the president has the power to formulate and direct military strategy and actions in times of war and peace. He is also responsible for the nation's security and the safety of its citizens.

Subject to confirmation by a majority of the Senate, the president appoints the members of the Federal Executive Council or the cabinet, diplomatic representatives, some members of the judiciary, the heads of federal departments and agencies and a large number of the administrative personnel of the Federal executive departments and agencies.²

In all democracies, leaders of the executive branch typically command, control, possess and administer most institutions of government. A president whose party has majority control of both houses of Parliament stands in a much stronger position to make legislative gains than a president contending with a hostile Parliament dominated by the opposition party.

2. Areas of friction between the Executive and Legislature

The type of governmental system which a country operates fundamentally influences the structure and tenor of legislative cum executive relations. Each system assigns certain fundamental privileges and responsibilities to the legislature and executive respectively while other external factors encourage cooperation or reward confrontation among the branches. For the purpose of this article, our attention shall be focused on budget making, budget implementation, law-making, oversight functions of the legislature, and party loyalty versus national loyalty.

(a) Budget making

The development, deliberation and passage of a budget with both legislative and executive participation represent one of the vital checks and balances of democracy. The budget is perhaps the most important piece of legislation passed by both arms of government, especially in a country like Nigeria. This is because all activities of the government are inextricably bound up with the budget. Because of its sweeping consequences, the budget process is often a cause of significant friction between the legislative and executive arms.

Budget development is typically the domain of the executive branch, subject to amendment and or approval by the legislature. In most countries, the legislature exerts its influence over the budget through the amendment process. This capacity varies considerably among legislatures. At the extreme is the United States Congress, which possesses *unlimited* amendment powers in the budget process.³

In contrast, most parliamentary systems allow the legislature to amend the budget to reduce or increase spending and taxes, but often only within specific limits (e.g. that the deficit may not exceed the target proposed by the government). Even more restrictive are some legislatures in the Westminster model, which must either approve the budget in its entirety or defeat the government in a no confidence vote.

The point must be made authoritatively that, from an overview of international experiences, the

¹ S. 148 of the Constitution.

² *Supra*, ss. 14(3) and 147

³ Congress considers the President's budget proposals and approves, modifies, or disapproves them. It can change funding levels, eliminate programs, or add programs not requested by the President. It can add or eliminate taxes and other sources of receipts, or make other changes that affect the amount of receipts collected. U.S. Office of Management and Budget, "The Budget System and Concepts: Budget of the United States Government, Fiscal Year 1999" (Washington, DC: U.S. Government Printing Office, 1998), p. 2. Available at http://www.access.gpo.gov/su_docs/budget99/pdf/concepts.pdf.

argument that the legislature cannot alter budgetary estimates is only half-truth; it represents the practice in some countries where their legal framework so provides. In an International Survey prepared by the National Democratic Institute, examples from other jurisdictions are given to buttress the role of the legislature in budget making.¹ For instance, the Namibian Constitution² requires the Finance Minister to submit the annual budget to the legislature, which in turn is mandated to “consider such estimate and pass pursuant thereto such Appropriation Acts as are in its opinion necessary to meet the financial requirements of the state from time to time”.

The Malawian Constitution³ effectively prohibits the legislature from considering any bill or amendment for the imposition of any charge upon the Consolidated Revenue Fund or any alteration of such charge unless the recommendations come from the government. This effectively prohibits amendments to the minister’s budget.

The Constitution of Ghana prohibits the imposition of a charge on the Consolidated Fund of Ghana or the alteration of any such charge otherwise than by reduction. The 1996 South African Constitution empowers the legislature to offer amendments to the executive’s budget but the legislature must provide the procedure to exercise this power under a framework law. The Polish House of Representatives under the 1997 Constitution has broad powers to increase or decrease spending and revenues in the executive’s budget. The only limitation is that the changes may not increase the budget deficit or decrease the surplus proposed by the executive. The amendments, if they are increased, must contain a corresponding increase in revenues.

In Sweden, the Spring Budget Bill presented on every April 15 contains the government’s proposal for aggregate overall spending and revenue for the coming year and the following two years. The legislature has powers to amend this bill without restriction but once passed, the aggregate numbers become legally binding and the actual budget estimate to be presented on September 20 to the legislature shall not exceed the aggregate approved.

South Korea’s legislature can reduce spending but must seek the executive’s approval to increase the budget. Inter-Parliamentary Union Members’ Rights in Budgetary Matters indicates that out of a total of 82 surveyed countries; 32 may increase and reduce expenditure and revenue; 17 may reduce but not increase expenditure; 4 may reduce expenditure but only increase it with the permission of the executive; 13 may increase or reduce expenditure if alternative provisions are made elsewhere; for 15 countries, the rights are not specified in detail and one is classified in the not applicable category.

In a study by some experts edited by Anwar Shah (2007),⁴ it was established that legal powers of the legislature to amend the budget vary from one country to another. Three situations are possible:

Firstly, Unrestricted power gives the legislature power to change both expenditure and revenue up or down, without the consent of the executive. Some presidential systems (for example, in the United States and the Philippines) fit this model—although the ‘power of the purse’ granted to the legislature is counterbalanced by a presidential veto. This situation implies substantial and direct legislative influence on the first two objectives of public expenditure management (fiscal discipline and expenditure allocation) as well as some indirect influence on the third (operational management). Secondly, Restricted power is the power to amend the budget but within set limits, often relating to a maximum increase in expenditures or decrease in revenues. The extent of these restricted powers varies from country to country. In France, United Kingdom, and the British Commonwealth countries, parliaments are not allowed to propose amendments that increase expenditure and have very restricted powers to propose any other amendment. By contrast, Germany allows such amendments, but only with the consent of the executive. This situation implies very limited legislative influence on resource allocation and (indirectly) on [operational management]. Thirdly, Balanced power is the ability to raise or lower expenditures or revenues as long as a counterbalancing measure maintains the budget balance. This intermediate arrangement, known in the United States as PAYGO, channels legislative influence to the sectoral allocation of resources, where it is more appropriate. Limits on the power of the legislature to amend the budget are particularly needed where legislative debates lead systematically to increased expenditures, as was the case in a number of former Soviet republics in the 1990s. The organic budget law should stipulate that legislative actions that increase expenditures can take effect only if these expenditures themselves are authorized in the budget or its supplementary Acts. However, these limits should never hamper legislative review of the budget. In some countries, the budgetary role of the legislature may need to be increased rather than limited.

¹ Tajudeen, *supra* n. 3, 264-5.

² Article 126, Section 7.

³ Section 57.

⁴ Published by the World Bank, entitled: ‘Budgeting and Budgetary Institutions’, p. 273. Available at http://www.unicef.org/socialpolicy/files/Budgeting_and_Budgetary_Institutions_Shah07.pdf. (Accessed: Sept. 7, 2016).

It is humbly submitted that the Nigerian legal framework fits the first model above. As the authors above conclude, it is more beneficial to expand the scope of the legislative power on the making of the budget through an enactment in conformity with constitutional provisions rather than restricting it.

Another empirical study by another set of experts¹ has confirmed the findings above in the World Bank publication.² They established that:

The powers of the legislative branch vary widely across countries, depending on the legal framework and the type of government system. The powers granted to the legislature by law with respect to its review and approval of, its oversight powers over, and (critically) its ability to change the executive's budget proposals are determined by each country's legal framework, often at the level of the constitution. As a consequence, there are large variations in the scope of these powers. In some countries the legislative branch can submit its own budget, reflecting its policy priorities, without reference to the executive branch's proposals. In other countries the legislative branch has great powers to vary budget allocations and hence policy priorities as long as it does not exceed the total spending limits. In still others the legislature can exceed the total limits as long as it brings forth equivalent revenue increases to cover the difference. In contrast to this flexibility, a large number of countries follow a parliamentary system of government, where the legislative branch has the power only to approve or reject the budget, the latter decision typically forcing the government out of power. For many countries, therefore, policy priorities are subject to interactive and detailed negotiations, revisions and compromises, which can often cloud the policy content of the budget finally approved. Even once the annual budget law is approved, nearly all systems allow in-year amendments, usually limited in number, that often represent changes in policy priorities within the year. As a consequence, it is not unusual for countries' budgets to exhibit major differences between ex ante and ex post policy priorities.

A final source on this subject matter contains empirical findings on experiences in African countries also establishes a variety in the scope of the power of the legislature on causing variation in budgets prepared by the executive arm of government, emphasizing again that it all depends on the legal framework in individual countries. The key findings on the issue of the amendment powers of the legislature are as follows:³

The potential for legislative changes to the executive budget proposal is determined in law. In the African context, there are several legal restrictions that are noticeably shaped by administrative heritage. Legislatures in many Francophone countries are not allowed to increase the deficit, whereas a large number of countries with a Westminster heritage allow legislatures to make cuts to existing items only. According to the 2008 CABRI/OECD survey of budget practices, 19 of 26 surveyed African countries prohibit certain types of amendments. In five countries (Ethiopia, Liberia, Mozambique, Namibia and Nigeria) legislatures have unlimited amendment power. In one case (Malawi), the legislature may not make any changes; it can only approve or reject the budget. Originally, the South African parliament belonged to the latter category; however, the National Assembly recently passed the Money Bills Amendment Procedure and Related Matters Act 9 of 2009, which outlines a procedure for amending the budget.

The Legal Framework on Passage of Appropriation Bills in Nigeria

The Constitution provides for the powers of the National Assembly to make laws, it states as follows:

The National Assembly shall have power to make law for the peace, order and good government of the federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution.⁴

Thus by virtue of the operation of this provision, the National Assembly has the powers under the constitution to make laws for peace, order and good government. This general power or authority which is given to the National Assembly under s. 4(2) stated above, implies that in exercise of its powers to make laws in relation to the 68 matters specified under the Exclusive Legislative List, the National Assembly must be motivated by the desire for peace, order and good government of Nigeria. The question that arises is whether in the exercise of these powers, the National Assembly can sometimes go outside its sphere of authority. The answer would appear to be in the affirmative provided it is in consequence of the exercise of its authority to make laws for peace, order and good government in relation to matters in the Exclusive List.

In Canada, the court has been faced at various times with the issue of the nature and scope of this power. In *Re The Regulation and Control of Aeronautics in Canada*,⁵ the court held that if a statute made by the Central

¹ Hemming, R., Barry, P., & Allen, R., (ed.) *Relationship between Legislative and Executive Branches, The International Handbook of Public Financial Management*, Palgrave, Macmillan, 2013, pp. 196-199.

² *Supra* n. 10.

³ Folscher, A., (ed.) *Status Report: Good Financial Governance in Africa*, CABRI & AFDB Secretariat, Pretoria, 2011, pp. 61-62.

⁴ S. 4 (2) of the Constitution

⁵ (1932) A.C. 54.

Dominion Power is substantially covered by powers it is specifically given by the constitution, any portion not so covered is not necessarily vested in the states, but is covered under the authority of the central government to make laws for the peace, order and good government of Canada. That is, the portion not so covered will not be treated as residual powers. In *Attorney General for the Dominion v. Attorney General for British Columbia*¹ prohibition of insurance in Canada unless on license from the Minister was held, *ultra vires*, the Dominion Parliament because it did not fall under the 'Regulation of Trade and Commerce' and could not come under its general powers for peace, order and good government, but encroached on the powers of the provinces.

One of the most basic and fundamental powers exercised by the National Assembly is the power to make laws in relation to taxation of income, profits and capital gains.² Under item 59 of the Exclusive Legislative List,³ the authority to determine the spending of the public funds resides in the National Assembly.

The legal framework for passage of money bills at the central government level is governed mainly by sections 59, 80 and 81 of the Constitution as well as the Fiscal Responsibility Act.⁴ The constitution provides that no money shall be spent by the Federal Government unless such expenditure is either provided for directly by the Constitution or it is authorized (i.e. appropriated) by the National Assembly. It states as follows:

No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those moneys has been authorized by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of section 81 of this Constitution.⁵

Section 81(1) of the Constitution prescribes the role of the President in the annual budgetary process – to prepare the estimates of revenue and expenditure and place same before the National Assembly. The Section reads thus:

The President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.

The role of the National Assembly in the passage of money bills is spelt out under s. 59 of the Constitution. The provisions of this section do not however limit the extent to which the National Assembly may alter the budgetary estimates submitted to the National Assembly by the President. Indeed, Section 59(4) vests in the National Assembly the veto power, where the President declines to give his assent to what the National Assembly considers fit and proper for the country. Where the President fails to assent to a Money Bill within 30 days of his receipt of same, a Joint Sitting of both Houses of the National Assembly is required. If the Joint Sitting passes the Money Bill by two-thirds majority, the assent of the President is dispensed with and the Money Bill automatically becomes law.

By the provisions of the Fiscal Responsibility Act,⁶ we can only come to the conclusion that the legal framework for budgetary processes in Nigeria allows the National Assembly to exercise the power to alter the budgetary estimates prepared by the Executive, where necessary, as the National Assembly deems fit.⁷ Section 3 of the Fiscal Responsibility Act mandatorily empowers the Commission created under the Act to, among others, enforce the provisions of the Act, including promoting section 16 of the Constitution of the Federal Republic of Nigeria, 1999. Section 16(2)(d) of the Constitution guarantees, among others, provision for all citizens of "suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled". Also, section 16(2)(c) provides that the economy shall not be operated in such a way that permits concentration of the commonwealth or the means of production in the hands of a few individuals or of a group.⁸

The critical importance of section 3 of the Fiscal Responsibility Act is that where the President presents a budget in contravention of section 16 of the Constitution, the National Assembly may be brought under public pressure (through Public Hearing opportunities) to include estimates which would make the budget comply with the provisions of section 16.

Section 11 of the Fiscal Responsibility Act provides that the Federal Government, after consultation with the States, shall place before the National Assembly, a Medium Term Expenditure Framework covering a period of three (3) years, to serve as a macro-economic framework. By section 18 of the Fiscal Responsibility

¹ (1916) A.C. 588.

² Mowoe, K.M., *Constitutional Law in Nigeria*, Malthouse Law Books, Lagos 2008 p.104.

³ Part I of the Second Schedule to the Constitution.

⁴ Cap F40, Laws of the Federation of Nigeria, 2004 (updated to 31st December 2010).

⁵ Section 80(2) of the Constitution.

⁶ Under this Act, the Fiscal Responsibility Commission created under it was empowered to enforce remittances or revenues of the Consolidated Revenue Fund of the Federation.

⁷ S. 3 (a) Fiscal Responsibility Act.

⁸ Although these provisions are non-justiciable in the court of law, they however serve as a framework for harnessing the resources of the nation and promoting national prosperity and efficient, dynamic and self-reliant economy. See *Attorney-General of Ondo State v. Attorney-General of the Federation* [2002] 9 NWLR (Pt. 772) 222 @ 382 para. A-B.

Act, the annual budget for each of the three years covered by the Medium Term Expenditure Framework is to be derived from the same Medium Term Expenditure Framework. Section 12 of the Act provides that aggregate expenditure shall not be more than the estimated aggregate revenue plus a deficit not exceeding three (3) percent of the estimated Gross Domestic Product (GDP). Again, where the proposed budget prepared by the Executive arm of government is at variance with the Medium Term Expenditure Framework previously passed by the National Assembly, the National Assembly would have an opportunity to check the Executive.

Rather than curtail the powers of the legislature, the National Assembly should in fact enact statutes to strengthen its powers over the budgetary process. It is in such a context that organized labour and other social forces may seize the opportunity provided by Public Hearings in the process of bill's passage to pressurize the legislature at critical times and on critical issues.

Significantly, Section 81(1) of the Constitution quoted above, reserves the power of budget preparation for the executive. After preparation, the budget is to be "laid" before the National Assembly. This constitutes the National Assembly into the statutory approving authority for the Appropriation Act. But the power of preparation of the Appropriation Bill, left entirely with the executive arm of government, has led to frictions between the executive and legislative arms of government since the advent of civil rule in 1999. The legislature in Nigeria has always altered (most times an increase) the executive proposals such that during the Obasanjo administration, the President refused to assent to the bill on the grounds that it was substantially different from the proposals sent. In a particular year, there was a legislative override of the President's veto leading to the President reluctantly implementing the budget and leaving many aspects of it.¹

The situation in Nigeria is quite peculiar. Taking advantage of their statutory responsibility as the approving authority for the annual Appropriation Act, Nigerian lawmakers have over the years become experts in increasing the various subheads in the national budget, especially as it relates to allocations to them and ministries ready to do deals with them.² According to a legislator:

... what each of us gets in a year depends on what we were able to insert in the Appropriation Bill, after negotiation with the executive arm.... The higher the budgetary allocations to the House, the higher the amount to be disbursed to the members of the house.³

The continuation of these trends under the present administration by Nigeria's legislatures and legislators without any sense of guilt or remorse clearly show that the nation's democracy is yet to graduate from its embryonic stage.

Be that as it may, the writers are of the view that, since Nigeria adopted the American presidential system, there is nothing intrinsic in the legislature towing the same line as the U.S. Congress, which possesses *unlimited*⁴ amendment powers in the budget process.⁵ After all, democracy is about everyone being equal and having the right to contribute in the decision making process.

Again, from the provisions of section 81(1) of the Constitution, it seems inexorable logical to conclude that the legislature has the power to make input by way of amendment, alteration or modification to the Appropriation Bill. Why? The synonym for *estimate* could be likened to *guesstimate*, which presupposes that it is a probable cost and not a fixed cost of doing something. Should the legislatures feel that they are better informed as to the cost estimate than what is proposed by the executive, it would be in the spirit of democratic tenets that such amendment be effected in the budget for the overall interest of the people they represent. This, in our opinion, does not in any way erode the power of the executive.

Looking at the matter from another perspective, however, the spirit of democracy dictates that there should be collaboration between the executive and the legislature in budgeting. In preparing the budget, the executive has to take the legislature into confidence and elicit agreements on the contours and major indicators of the budget. This will guarantee that the executive budget gets to the legislature as a done deal so that it will roll out with little or no modifications.⁶ It will be ridiculous for Nigerians to begin to accept half-truths and innuendoes as the excuse for non-performance by the executive.

Though the Nigerian experience so far shows that the National Assembly has the power to alter the money bills submitted by the executive, it would appear that the executive has sufficiently succeeded in demonizing the National Assembly (even on matters in which the Executive is equally guilty) that members of the legislature appear subdued to concede that the powers of the National Assembly lies in either passing or rejecting budgetary estimates submitted by the Executive, without making changes.

¹ Onyekpere, E., "Playing games with Capital Budget" *The Punch* Newspaper, July 30, 2012, p. 94.

² See Usigbe, L., "Jonathan's Democracy day symposium and matters arising", the *Nigerian Tribune*, Thursday June 7, 2012, p. 41, where the President complained that budgeting has been a yearly challenge for the government because of its experience with the lawmakers.

³ Quoted in Akindele, *supra* n. 1.

⁴ Emphasis supplied.

⁵ *Supra*, n. 6.

⁶ Onyekpere, *supra* n. 25 at 94.

(b) Budget implementation

One fact for which Nigeria is notorious is the failure to implement the capital budget, year after year. Funds meant for the projects are usually either withheld or misappropriated by the executive. In the last administration of Goodluck Jonathan, the nation had been inundated with debates and postulations about the propriety of the threats, by the House of Representatives, to start impeachment proceedings against the President if the capital budget is not properly implemented.¹ To the average Nigerian, the main issue is the culture of poor capital budget implementation at the federal level. Since the return to civil rule in 1999, there has never been a year that the capital budget attained 75% implementation. This abnormal situation has become the norm and thus any challenge to the *status quo* for improvement is resisted by those who stand to benefit from the sufferings of majority of Nigerians.² Over time, the legislature has always had problems with the executive over finance or funds and we have heard most lawmakers talking about first-line charge or realization of their financial autonomy.³

We must bear in mind the fact that both the executive and legislature are culpable in the failure to implement the budget as passed. This is largely due to the endemic corruption in both arms. One would have expected that membership attrition would have reduced or completely removed the level of corruption from both arms of the nation's democratic governance processes given the fact that officials with such shabby political inclination must have left the governance through electoral defeats. The distasteful truth, however, is that in Nigeria there is usually a recirculation of members of the National Assembly and the executive over the years especially in this present administration with deflections of PDP members into the APC ruling government at the national level.

Since 1999, one consistent stigma that has continued to dog the National Assembly is scandals of different proportions. And the more the leadership of the two chambers tried to cover up, the more the crisis degenerated.⁴ Accusations and counter accusations between both arms are commonplace.

It is imperative to point out that it is the capital budget that touches on the lives of the people, which constitute a significantly greater percentage of the population. Sadly though, while capital budget implementation is treated with levity and disdain, public servants and politicians draw their full salaries and also fully draw down the overheads. Failure to implement the capital budget amounts to economic sabotage, a declaration of fiscal war against the suffering masses. If we continue to implement the capital budget at a rate of 11.9% every three months, we would by the most generous calculations be doing about 36% at the end of the year which would represent a failure as in recent years.⁵

Unfortunately, the lawmakers cannot exert any meaningful restraint as long as corruption still reigns in the legislature and the government in charge of the executive also commands a majority in the legislature.

(c) Law making

Modern democracies are characterized by shared decision-making by the legislative and executive arms. Generally, a country's constitution formally structures this interaction. Practically, precedent and convention then fill in the gaps to create the political system under which a government operates on a daily basis.⁶ The wellbeing of a democracy declines dramatically, however, when the executive arm excessively dominates the legislature.

The legislative process whereby laws are developed and adopted, and the appropriate level of taxation and expenditure is determined is one of the fundamental decision-making mechanisms of modern democracies. Because nearly all of the executive's major policy initiatives must be approved by the legislature via this process, it provides a critical opportunity for legislators to influence policy and check executive power.⁷

Despite the fact that the most visible portions of the legislative process occur with only legislators present (i.e., debates and voting), the legislative process is very much a collaborative exercise between the legislature and the executive. This is because much of the time and effort exerted in shaping legislation occurs before a bill is actually proposed to the legislature.

The complexity of modern-day governance also contributes to executive domination of the legislature. Comprehensive policies require overall knowledge of the situation in a country and a great deal of skill and knowledge of a variety of specialized areas including law, economics, social science, medicine, physical science

¹ See, for example, "2013 Budget: Jonathan Cautious of Impeachment Threats from National Assembly", available at www.herald.ng/2013budget. (Accessed: Sept. 9, 2016).

² Onyekpere, *supra*, n. 25 at 94.

³ Muideen O.S., "We'll struggle for independence of legislature", 15th April 2012. Available at http://sundaytrust.com.ng/index.php?option=com_content&view=article&id=9879:well-struggle-for-independence-of-legislature&catid=32:sunday-politics&Itemid=3. (Accessed: Sept. 2, 2016).

⁴ Ezea, S., "National Assembly and History of Scandals", *The Guardian*, Saturday May 21, 2011, p. 52.

⁵ *Supra*.

⁶ http://www.ndi.org/files/980_gov_legcapacity.pdf. (Accessed: Sept. 6, 2016).

⁷ *Supra*.

and communications technology. As such, legislation often demands the input of specialists to assess national needs in their respective areas and develop legislation accordingly. These experts are frequently members of executive agencies or ministries, and are often employed on a long-term basis. On the other hand, legislators lack the resources to develop legislation that can match those of the executive in comprehension and expertise. Legislatures in emerging democracies are trying to develop increased legislative drafting capacity through staff training and development.

In most democratic legislatures, the executive arm introduces 90 percent of the legislation, of which 90 percent is passed. From the first stage of initiation onwards, the legislative monopoly of legislation is markedly encroached upon, and the theoretical division of powers between the Legislature and the Executive tends to give way to the practice whereby the government takes the initiative in drafting and introducing legislation.¹

Legislators are often further hampered by restrictions when considering budgetary legislation. In many parliamentary systems, especially those based on the British model, members of parliament may not initiate legislation with financial consequences (e.g., to increase overall spending), which is exclusively reserved for the government. This restriction may have the effect of completely undermining all the legislators' right to introduce bills, because many, if not most, items of legislation have financial implications.

The relative balance of legislative-executive power in a country is a constantly evolving dynamic. The balance may ebb and flow as personalities, politics, current events and public opinion alter the political landscape. In the United States, for example, many laws extending prerogatives and authorities to the executive arm were repealed in the mid-1970s in response to high-level malfeasance associated with Watergate.²

In Nigeria, section 58(1) of the Constitution empowers the President to assent to bills passed by the legislature in order for such bills to receive the force of law. The veto provision under subsection (5) of the section has rarely been invoked by the National Assembly since 1999 except in the case of the establishment of the NDDC³ when it upturned the veto of former President Obasanjo. Legislators may set aside the president's veto and enact legislation without his signature – override a veto – if both chambers vote to do so by a two-thirds majority.⁴ This super-majority is frequently difficult to muster, therefore, imposing legislative cooperation with the executive.

(d) Oversight functions of the legislature

In order for the people to rule, they require a mechanism to represent their wishes – to make or influence policies in their name and oversee the implementation of those policies. Despite the need for strong legislatures, many legislatures are overwhelmingly dominated by the executive branch. This problem is especially prevalent in emerging democracies.⁵ A government with a legislature lacking the capacity to effectively oversee the executive or influence policy – a legislature that exists solely to “rubber stamp” executive decisions – cannot be deemed democratic in the real sense.

It is the auxiliary power of the legislature to see that its legislations are implemented by the executive. Therefore, the legislature must then monitor, oversee and supervise the executive arm not only to ensure the execution but to ensure that the legislations are properly executed.⁶

Despite the dominance of the executive, the situation can be changed. It is up to legislators themselves to build strong legislative institutions by asserting themselves in the regular law-making and oversight functions, or through specific structural changes via constitutional amendment, legislation or rules of procedure.

The issue of oversight of the executive by the legislature is very important given the enormous powers wielded by the executive leaders. Oversight came into existence as a means of reviewing, monitoring and supervising government agencies, programs and activities. Aside from the American Congress which continues this legislative power through the Congressional Committee System, other democracies including Nigeria are today partakers of this great tradition.

Oversight is also the obvious follow up activity linked to lawmaking process. After participating in lawmaking, the legislature's main role is to see whether laws are being effectively implemented and whether, in fact, they address and correct problems as intended by their drafters.

By initiating this system, it is acknowledged that human beings when entrusted with responsibility and commonwealth are likely to abuse the privilege, hence the need for checks and close watching. There is nowhere that the tendency to abuse office and commonwealth is more glaring than the third world countries such as Nigeria and other sub-Saharan African countries. This is all the more reason the legislature should not simply ‘rubber stamp’ budget estimates as proposed by the executive arm.

¹ Tajudeen, supra n. 3, 268.

² *Supra*, n. 36.

³ Niger Delta Development Commission.

⁴ S.59(4) of the Constitution.

⁵ *Supra*, n. 36.

⁶ Shehu, A.T., “The oversight powers of the legislature in Nigeria” in *Law, Politics and Development, The Challenges of an emerging Mega-City: Essays in Honour of Babatunde Raji Fashola SAN*, Nigerian Bar Association, Ikeja Branch 2012, 64.

The Nigerian equivalent of the American Legislative Reorganization Act of 1964 which concretized the Philadelphia Convention is Section 88 of the 1999 Constitution (as amended) and Order XVIII, Rule 184 of the Standing Orders of the House of Representatives which entrenched oversight among the powers of the legislature.¹ In some cases the power of legislative oversight has been abused for selfish gains. Oversight is a duty carried out on behalf of the Nigerian masses. Oversight tours of both public and private facilities and comparison of both can help improve the quality and performance of government-owned or run facilities.

In presidential systems, the constitutionally prescribed separation of powers fosters competition between the legislative and executive arms. Legislators in presidential systems may have a greater incentive to oversee executive actions in order to improve their institution's standing (and by association their individual political reputations).

Despite the importance of this function, legislators often lack the political incentives to carry out this responsibility. Other activities such as policy issues, constituency service or seeking re-election, are frequently higher on legislators' agenda, while oversight is perceived of as boring. Politicians are more concerned with retaining their seats and amassing wealth than performing any function of government.

The last thing a politician wants to do is to engage in activity that challenges the policies and actions of their own party's government. Why? This is probably because their career depends on their placement on the party's list. Secondly, governments simply find it easier that way; governments do not want to lay themselves open to wider and possibly more effective scrutiny, thus making life potentially more difficult for those in power. Thirdly, governments do not wish to share power any more widely than absolutely necessary. Fourthly, and arising in part out of the third point, parties in power (and those who aspire to power) do not wish to see their ability to implement their policies diminished.

It is a wise idea to appoint oversight committees. These committees, and in some cases, the Legislators, would go to the sites of approved projects to see how well they are being implemented. This is the duty of the Public Accounts Committee in Nepal. Again, it has been alleged that the recommendations of the various investigative committees concerning critical areas of the Nigerian economy set up by the legislature are not being implemented by the executive. According to the former Speaker, in furtherance of its oversight functions, the National Assembly carried out investigations to ensure that the principle and practice of public accountability was moved from the realm of sheer rhetoric to that of reality but the recommendations of the investigative committees are not implemented by the executive.²

There is no better time than now to monitor government businesses and our commonwealth for probity, fidelity and above all efficiency without being adversarial. The lawmakers must at all times invoke every necessary legislative instrument necessary for its work. Oversight remains a veritable weapon.

(e) Party loyalty versus national loyalty

Conflict of loyalty is another source of friction between the executive and the legislature. While some politicians choose to put their parties in foremost consideration as far as loyalty is concerned, others chose to put the nation first; and yet to some others, their personal interests must come first.

In parliamentary systems, majority's control by the government, coupled with party loyalty, limits members' motivation to criticize executive policies. It is not politically profitable to extend a searchlight upon one's own closest political allies or literally upon one's own party.³

Party discipline and loyalty maybe a strong factor whose influence on a house or committee may move the house or committee from the path of objectivity when it comes to reporting the findings of an investigation. This factor may also not allow the findings of an investigation. This factor also may not allow oversight to function because where the same political party forms the executive arm and has overwhelming majority in the legislature any move to carry out effective oversight may be seen as anti-party activity and disloyalty to the party.

Pressure from above can further silence members. According to a deputy speaker in South Africa: "Ministers have a tendency to intimidate members of parliament when they become too inquisitive and ask probing questions about their respective departments."⁴

The relationship between both organs is also strained and divided by political and party affiliations. Former President Jonathan of Nigeria has argued that creating divisions does not lead to good governance as politicians who belong to the same party ought to espouse similar ideals or, in other words, their party's ideals. He stated further that both arms should work together to make sure that the party manifesto guides their actions.⁵

¹ Dakuku, P.A., "Saving our Commonwealth: Thoughts on Legislative Oversight" in *The Punch*, Wednesday June 13, 2012 at 16.

² Usigbe, *supra* n. 26 at 41.

³ Wiberg, M., "Parliamentary Questioning: Control by Communication" in *Herbert Doring: Parliaments and Majority Rule in Western Europe* (New York: St. Martin's Press, 1995), 218.

⁴ Hon. Zulu, L., presentation at the 9th International Anti-Corruption Conference, Durban, South Africa, 10-15 October 1999, p. 6. Cited in *legcapacity.pdf*, n. 36.

⁵ Usigbe, L., "Between Separation of Powers and Party Loyalty", *The Nigerian Tribune*, Thursday June 7, 2012, 41.

Thus he was indirectly advocating party loyalty in place of national loyalty. In the election of the former Speaker of the House of Representatives the members of the house had gone against the zoning formula of the ruling PDP and directions of the presidency in choosing the Speaker of the House. The members in so acting claimed they were upholding the independence of the legislature,¹ an action which greatly irked the President and the ruling party.

Why, in fact, should the President be involved in choosing the Speaker of the House? This goes to show that the legislature is not independent from the executive as the executive tends to unduly interfere in its affairs and duties. The legislature is the watchdog of the executive and so should be independent.

3. The need for a Strong Legislature

The need for strong legislatures is reflected in the very meaning of democracy: “rule by the people”. This is more so because the legislature is more representative of the people than the executive. The legislature is a body of the representatives of the people while the executive is the agent of the people. Members of parliaments would also have their own constituencies’ grievances to iron out with the executive and most times, there are petitions from members of the public.

Legislators around the world have developed practices, strategies and tools to ensure that they are not dominated by the executive. Legislators can counter executive domination by maintaining year-round control over the budget. In the U.S. State of Massachusetts, for example, the legislature uses an internal rule of procedure – called a report-in-part – that allows it to reopen any portion of the current budget for revision whenever the executive (governor) requests supplemental funds. Thus, a program is subject to alteration or elimination at any time during the year, which makes executive agencies more responsive to the legislature.²

Where the opposition controls the legislature, it can make use of the amendment power of legislators. Bill proposed by the executive can be altered to align more or to some extent with the policies of the opposition party.

The impediments facing both arms are both systemic and self-inflicted. Creating a workable, mutually agreed upon balance can be an extremely odious task. There is need for the legislatures and legislators in Nigeria to get out of their systemic and self-inflicted impediments and patriotically confront the challenges they face with a view to nationally performing the functions for which they are elected. This is particularly so in that, the benefits, democratic self-fulfillment and governance of the Nigerian masses are clearly locked in the existence of an effective, non-corrupt legislature and legislative process which are devoid of the present myriad of problems and political decadence.

This piece would not be complete without mentioning the use of confidence votes. No person, entity or organ of government is happy to hear another party continually pass votes of no confidence on it. Legislators should sit as a court passing continual judgment on the record of the executive and continuous sentence on its future prospects. Such votes will go a long way in forming public opinion which will in one way or the other affect the fortunes of the executive.

External oversight mechanisms such as ombudsmen, auditors general, comptrollers, and legislative liaison offices at ministries would also come in useful. Legislators in democracies worldwide are using these and other tools to achieve greater balance in legislative-executive relations and enhance their participation in the policy making and oversight process. This ongoing effort requires the commitment of both the executive and legislative arms of the relationship, as well as civic leaders, the media and the public at large.

All having been said, the sad fact remains, that control over legislations usually lies with the majority party in the house and it is this same party that, in most cases, controls the executive as experience has shown in the Nigeria political landscape.

4. Conclusion

In this paper, the writers examined the powers of the executive and legislative arms of government in relation to the budget process so as to avoid unnecessary frictions and a possible fiscal stalemate in future.

The writers also attempted to make a case for more powers to lie in the domain of the legislature. In the light of the survey of international experiences and an analysis of the legal framework governing an aspect of the budgeting process in Nigeria, we humbly submit that it is a misconception to argue that the legislature has no power to alter budgetary estimates prepared by the executive. The long term public interest would be better enhanced where the existing powers of the legislature in Nigeria to alter budgetary estimates by the executive are sustained. Rather than curtail the powers of the legislature, the National Assembly should in fact enact laws to strengthen its powers over the budgetary process. It is in such a context that organized labour and other social forces and stakeholders may seize the opportunity provided by Public Hearings in the process of bill’s passage to

¹ Usigbe, *supra* n. 26 at 41.

² Tajudeen, *supra*, n. 3.

pressurize the legislature at critical times and on critical issues.

A smooth working relationship between the executive arm of government and the legislature is *sine qua non* to meaningful development. Both the executive and the legislature have a common agenda, to wit: to serve the people and see to their welfare and security. So, there is no reason or need for any friction. Where there is disagreement or discrepancy, dialogue remains the best option.