ABSTRACT

Since the transition to civilian rule in May 29, 1999, the country has witnessed conflicts between the legislature and the executive over budget matters. These conflicts are not only restricted to the federal level but also a common phenomenon at the state government level. This paper discussed the poor relationship over the budget matters and made suggestions on how to improve the process. The paper surveyed the literature on the legal framework of the budgetary process in several countries. Thereafter, the paper examined the legal framework for the budgetary process in Nigeria as well as the issues involved. The paper concluded that the 1999 constitution grants extensive powers to the legislature over budgetary matters such as unlimited powers of amendment of the draft budget, auditing and monitoring and unlimited time frame for the approval of the budget. Thus, the paper suggested that the powers though necessary for the purpose of checks and balances, however, should be exercised with caution.

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LEGISLATIVE – EXECUTIVE RELATIONS AND THE BUDGETARY PROCESS IN NIGERIA: AN EVALUATION OF THE 1999 NIGERIA CONSTITUTION

Introduction

The role of the legislature and the executive in public finance remains a controversial topic. First, public choice theorists tend to portray the legislators as selfish politicians, who will like to help themselves with public resources either to pursue their individual, constituency and political party interests and not national interest. On the other hand, the parliamentarians argue that the executive, largely made up of non elected members cannot claim to understand the needs of the people better. This is predicated on the assumption that the parliament is largely, made up of elected representatives, who logically understand the needs of the people.

The 1999 constitution established the legal framework for democratic government based on a presidential system. Under the constitution, Nigeria is also structured as a 'Federation'. Thus, it established a bicameral legislature at the federal level while at the state level, it established a unicameral legislature. Since the re-emergence of democracy in May 29, 1999, the country has witnessed conflicts between the legislators and the executive over the budgetary processes at all levels of government. As President Obasanjo remarked: ''It was perhaps expected that at the beginning of our search for the meaning and the form of a true republican democracy, mistakes would be made, and extreme positions will be taken by those involved in the search "(Obasanjo, O., 2000).

The objectives of this study are to establish the government budgetary process; the legislative organization for the budget approving process and identify the areas of conflicts. Thus, the paper will attempt to review the legal framework of the budget process in Nigeria with the aim of understanding the reasons for the conflicts.

1.1 Study Methodology

1.1.1 Coverage and Scope of the Study

The study relied on primary and secondary data. The primary data were collected through structured questionnaires and personal interviews administered on selected officials of the National Assembly and the State Houses of Assembly in the six geo-political zones, namely; Bauchi, Imo, Kaduna , Ondo, Delta and Niger states. The questionnaires and personal interviews only required the respondents to provide their own perceptions. The secondary data were obtained from the approved budgets as amended by the various parliaments. In addition, several important documents such as House Rules and Procedures and some other relevant memos were also obtained.

The choice of the six states reflected the need for adequate geo-political coverage. These were South-South (Delta State); South –West (Ondo State); South-East (Imo State); North-Central (Niger State); North-West (Kaduna State); North – East (Bauchi State). Thus, in each state, six questionnaires were administered as follows:-

- **The Chairman, Committees on Education,**
- **The Chairman, Committees on Health and Environment;**
- **The Chairman, Appropriation Committees,**
- **The Chairman, Public Accounts Committees**
- **The Majority Leader of the State House of Assembly;**
- **The Minority Leader of the State House of Assembly.**

At the National Assembly, questionnaires were distributed to the Chairmen of the Appropriations and Public Accounts Committees, Education, Health, and Sports

Committees, the Majority leader and the Minority leaders of the House of Representatives and the Senate.

The importance of the structured questionnaire was that it provided an insider view of the whole process of budgeting in the country. The review of the constitutions shed more light on the differences and similarities of different national constitutions. It also provided the basis for some of the conclusions and recommendations made. Most of the constitutions surveyed had their documents obtained from an Internet, (International Constitutional Law: http/www.uni-wuerzberg. de/Law).

The questionnaire specifically asked the lawmakers to provide their own perspective based on the four years experience in lawmaking. The questions asked were largely on the following areas:

- **The process of considering the specific committee budget proposal;**
- **The time spent in the review of the draft budget;**
- **The importance of the budget**
- **The adequacy of resources for the parliamentary role in the budgetary process;**
- **The adequacy of the timing of the submission of the audit report and the associated problems;**
- **The process of parliamentary oversight functions and its adequacy under the democratic system;**
- **Reasons for amending the budget draft, etc.**

A breakdown of the respondents showed that the survey on sectoral committees recorded 80 percent response rate from the federal and state parliaments. The survey on the appropriation and public accounts committees was 62.5 percent; and the survey on the party leaders recorded 70.0 percent response

rate. The information was obtained either by personal interviews of some of the honorable members of the parliaments or via administered questionnaires

1.2 Structure of the Report

The rest of the report is structured as follows: Section 2 reviews the budget cycle with emphasis on international practices. Section 3 appraises the legal provisions for the budget process in Nigeria. Section 4 provides the analysis of the empirical findings while section 5 concludes the paper and makes recommendations.

SECTION 2

2.0 Government Budgets and the Budget Cycle: International Experiences

Premchand, A. (1983) opined that government budget in the early stages of its evolution was concerned with serving the purpose of legislative accountability. This emanated from the long struggle between the legislature and the monarchs, culminating to the legislative control of taxation, allocation of expenditure and borrowing by governments. Government budgets have some important characteristics which are associated with regularity - requiring the annual submission of budgets, unity - meaning comprehensiveness of all the transactions of government; accuracy - implying that revenue and expenditures are firm as a bond with the legislature and a basis o f their approval; clarity - so that the community and its representatives could understand and deliberate on its contents, and publicity, therefore, implying that it is a public document and the content is known by the community. Therefore, the purpose of a government budget may be considered as a tool of fiscal accountability, management and economic policy.

2.1 The Cycle of a Budgetary Process

The public sector budgetary process is divided into four phases, namely; budget drafting, legislating, implementation and auditing. Typically, the role of the legislature and executive is clearly spelt out in each phase (Izedonimi, 1997).

2.1.1 Budget Drafting Phase

Most constitutions empower the President or the Cabinet to prepare a draft of the budget. In Britain, for example, the tradition of requesting for a budget draft from the cabinet was codified in the 1713 standing order, today known as No. 48 standing order of the House of Commons (Joachim, W. 2001a). A review of some African constitutions indicates that most of the constitutions assign the budget drafting function to the executive arm of the government. Perhaps, this derives from the technical and the time consuming nature of drafting a modern budget. Some constitutions assign the function to the President, while others to the Cabinet. The examples of constitutions that assign the function to the President are: Kenya[1], Ghana [2] and Zambia[3] and those that assign it to the cabinet are Malawi[4] and Namibia[5]. A survey of some European constitutions also reveals that in Germany[6] and France[7] the budget drafting functions are assign to the executive.

However, there are some exceptions to this rule. The most interesting example is the US 1787 Constitution, which assign the budget drafting function to the Congress.[8] This system truly represents the wishes of the people as each representative will have to consult its constituency in determining preferences. Thus, the national budget can truly represent a consolidation of the decisions of the people. In addition, the system enhances the popular participation required under democratic governance. However, since 1921, this power has been ceded to the President. This was as a result of the increasing technical nature of modern

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1 Article 100 of Kenya'
2 Article 108 of Ghana's 1992 Constitution
3 Article 117 of Zambia's 1996 Constitution
4 Article 96 of Malawi's 1995 Constitution
5 Article 40 of Namibia's 1990 Constitution

6 Article 110 (2) of German's 1949 Constitution
7 Article 20 and 47 of France 1958 Constitution
8 Article 1 (sections 7 & 8) of USA's 1787 Constitution

budgeting. Nevertheless, the draft budget of the President remains an advisory draft, implying that the Congress has an ultimate power to alter the budget (Bowles,N.,1998).

The major issue arising from the drafting of the budget by the executive is the timing of the presentation of the draft budget to the parliament. A survey of several constitutions identified two traditions. First, is a tradition in which the budget is presented to the parliament before the commencement of the financial year For instance, in Germany, the budget is presented to the parliament four months before the commencement of a new financial year. (Heller,W.B.,1997). Other examples include the Republic of Congo, whereby the budget is tabled before the parliament seventy- five days before the commencement of a new financial year[9] . In Madagascar, the constitution provided for sixty days before the commencement of a financial year for the President to present the draft budget[10]. This tradition gives enough time for the parliament to consider and debate on the budget.

On the other hand, the second tradition requires the budget to be submitted after the commencement of the financial year. This tradition is mostly practiced by the constitutions of the parliamentary -type systems and examples are India, South Africa, and Zambia.[11]. The main reason behind this practice is the belief that economic conditions are not static. Thus, budget approvals before the new financial year are usually based on those economic conditions existing previously which are likely to change in the New Year.

2.1.2 <u>The Legislative Phase</u>

The legislative phase of the budgetary process involves the consideration of the budget by members and subsequently, approving the budget (Reid. G. 1966). Therefore, the Act of Parliament is required to give authority to the governments' estimates of revenue and expenditure plans on annual basis. The legislative control is further complemented through the establishment of a consolidated revenue

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[9] Article 118 of 1992 Congo's Constitution

[10] Article 88 of Madagascar's 1992 Constitution

fund.[12] Several constitutions provide for all withdrawals from the fund to be approved by the parliament known as 'money bills' and examples are Ghana[13], Kenya [14] USA,[15] Germany[16] and Canada[17].

While it is appropriate for the executive to prepare the draft budget and present it to the parliament for approval or rejection, the issue is whether the parliament can amend the draft budget which is prepared by the executive. There are three traditions which can be identified from the review of several Constitutions. These traditions are:

- **Budget- Making Legislatures**
- **Budget- Influencing Legislatures**
- **Legislatures that has no effect on the draft budget**

The budget- making legislatures have unlimited constitutional powers to amend the draft budget of the executive e.g. USA[18]. A budget influencing parliament can amend, or generally, influence the revenue and expenditure estimates without affecting the general outcome of government fiscal operations. For example, in Germany the parliament is not constrained to amend the draft budget, except for the constitutional requirement that they must balance revenue with expenditure. These amendments must be convened to the federal executive before the final voting.[19] The third are those parliaments that cannot affect the budget presented to it. This is commonly practiced by the Westminster type parliaments. Examples of such practices are in U.K., Australia, Canada, and

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[11] Article 115 of Zambia's 1996 constitution

[12] Consolidated Revenue Fund is a central government purse in which all government receipts are paid into and expenditure allocated from this account and is usually enshrined in the constitution.

[13] Article 181, Sections 1 & 3 of Ghana's 1992 Constitution

[14] Article 48 of Kenya's 1992 Constitution

[15] Article 1 section 1 of US 1787 Constitution

[16] Article 110* of the Basic Law of Germany of 1949

[17] Article 55 of Canada's Constitution of 1867

[18] The idea of a powerful government and political party loyalty that exists in most other constitutions is absent in the US system. Although, the President and the majority of members of the congress are of the same party, the ideas of separation of powers enshrined in the constitution tend to reduce the expected unity. In this regard , the political party machinery only serves as a gulf between the President and the parliamentarians.

[19] Articles 110 and 113 the Basic Law of Germany of 1949.

India[20]. Typically, attempts by members of parliament to amend the draft budget would amount to 'vote of no confidence' compelling the resignation of the entire government.

Another important issue in the legislative budgetary approval process is the conflict arising as a result of bicameral legislature. A bicameral legislature consists of the upper and the lower houses. As observed in most constitutions, the lower house has the primary responsibility for the approval of governments' budgets (Heller, W. B., 1997). For instance, in Britain, there is a cleverly designed tool that enables the House of Commons to control decisions on the budget. For example, the 1911 Parliament Act, forbids the House of Lords from rejecting 'money bills' passed by the lower House. Also, in Germany, the federal budget does not require the approval of the upper house except for legislations pertaining to taxes that are centrally shared among the federal and the Landers (states) (Courchene,T. et al 2000).

2.1.3 Implementation Phase

Universally, constitutions assign the powers of implementation of the approved budgets to the executive.[21] . Therefore, it is the technocrats, public servants and, especially, civil servants who carry out the programs and projects, including procurements. There are a number of legal instruments and constitutional provisions which guide their behaviors and activities. [22]

However, in order to maintain the function of the budget as a comprehensive annual plan of government activities, several constitutions have made provisions for interim measures. Examples of such provisions are the constitutions of India, [23]

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[20] Article 113 of the India's 1950 Constitution

[21] The executive consists of Ministers charged with ministerial responsibilities and Heads of extra-ministerial departments

[22] In Ghana the constitution requires senior officers , including the President and Ministers to declare their assets and liabilities before going into office. In addition, the ministerial list must be approved by the House in accordance with the constitution.

[23] Article 116 of the India's 1950 Constitution

Kenya, [24] and Germany. [25] Conversely, some constitutions frown at interim measures implying, that budget must be approved before implementation. Under this situation, the activities of government come to a halt whenever the parliament fails to approve the budget before the commencement of the financial year and examples are USA[26] and Congo[27]. This gives absolute power on budgetary matters to the legislature. In the French system, when a budget is not approved at the commencement of the financial year, the budget is passed by an 'ordinance' and normal activities of government continue[28]. In some other system, the provision of interim measures becomes a rule rather than a solution because the budgets are usually, presented after the commencement of the financial year.

Although, some constitutions made provision for interim measures, however, the time span, expenditure limits and composition differ from one system to another. For instance, some constitutions made the interim expenditure to rely on the previous year's budget as in Zambia[29]. Others specifically, rely on the current government budget proposals, as in Kenya[30]. In addition, some constitutions provide for the interim measure to cover both recurrent and capital expenditures as in Ghana[31] and Zambia [32] while others restrict the interim expenditure to only recurrent expenditure, debt service inclusive, as in Germany[33]. The timing of the interim measure also, varies from one system to another. For instance, in Germany, interim measure can only be used for only four months. In, Ghana, it is used for a maximum period of three months, while in Zambia it is allowed for a period of six months . Generally, the use of interim measures is restricted to an average of 3-4 months. However, the extensive use of interim measure could result in the loss of parliamentary control.

[24] Article 101 of Kenya's 1996 Constitution
[25] Article 111 of the Basic Law of 1949
[26] Article 1 section 8(7) of US 's 1787 Constitution
[27] Article 118 of the Republic of Congo's 1992 Constitution
[28] Article 47 of France's 1958 constitution
[29] Article 115 of Zambia's 1996 constitution
[30] Article 101 of Kenya's 1996 constitution
[31] Article 180 of Ghana's 1992 constitution
[32] Article 115 of Zambia's 1996 constitution
[33]

Another issue in budget implementation is the need for supplementary estimates during the financial year. In most systems, supplementary estimates and virement require the approval of the parliament as in Egypt,[34] Malawi,[35] Uganda,[36] and India[37]. With respect to timing, approval of the estimates and virement, three practices were identified. First, some constitutions require that the supplementary estimates must be approved before spending, e. g. USA.[38] Second, some constitutions provide for retrospective approval of the supplementary estimates as in Zambia.[39] Third, some constitutions grant power to the Finance Department to approve such requests but subject to an upper limit provided by the parliament during the main budget approval[40], as in Germany.

Although, the legislature is not involved in the implementation of the budget, nevertheless, many constitutions provide for parliamentary supervision over budget implementation. This is to ensure accountability, transparency and orderly implementation of the approved budgets. However, the degree of parliamentary oversight function differs widely among different systems. In some cases, parliamentary oversight function is weak while in others it is strong, and stronger in defense appropriations. For example, US Congress exercises a strong oversight function over budget implementation and more stringent over defense appropriations. The constitution provides that no defense commitment will be entered into by the President without the approval of the Congress.[41] In addition, to ensure transparency, the constitution clearly made it necessary for the executive to publish at regular intervals, the statement of income and expenditure.[42]

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[34] Article 116 of Egypt's 1972 Constitution
[35] Article 177 of Malawi's 1992 Constitution

[36] Article 156 of Uganda's 1995 Constitution
[37] Article 115 of the India's 1950 Constitution
[38] See note 41
[39] Article 117 of Zambia's 1996 Constitution
[40] In Germany , the Basic Law further requests the implementation of supplementary budget, however, any additional expenditure above the limits must be financed by commensurate cuts within the same vote head.
[41] Article 2, Section 2 of US's 1787 Constitution
[42] Article 1, Section 7(7) of US's 1787 Constitution

On the other hand, when parliamentary oversight is weak, then all control mechanisms are left to the internal outfit of the executive. This poses danger as there is a complete absence of checks and balances which is an important ingredient of democracy. The implication is that it might be too late to address the deviations and other wholesome practices that may impede on the achievement of the budget objectives.

2.1.4 The Auditing Phase

The auditing of government accounts ensures that funds approved under the 'Money Bills' were properly appropriated. The tradition is distinct from the oversight function of the parliament but it is in the support of the function. Thus, the audit report is usually submitted to the parliament who is tasked with the examination and taking necessary action to implement the recommendations. The relevance of an audit report depends on the timing and the extent of independence of the report. With respect to the timing of submission of the report, constitutional provisions differ greatly, from one system to another. Therefore, the timing of the report is very crucial for the creditability of accountability, transparency and orderly implementation of the budget.

As a result, in some systems, there are provisions made as regards to the timing of an audit report. For example, in Ghana, the Auditor-General's audit report must be submitted to the parliament within six months after the end of the financial year.[43] Also, in Germany, the report must be submitted within ten months after the financial year.[44] The advantage is to minimize delays in the examination of actual outcomes in relation to estimates of the financial year. Secondly, it is an important input in the budgetary process of the following financial year. In other systems, there is no specific time for the audit report to be submitted to the parliament. Therefore, the timing of the submission of the reports is entirely dependent on the efficiency of the Auditor- General and the staff of the Accountant-General's Office.

[43] Article 187 of Ghana's 1992 constitution

The independence of the Auditor – General in most systems are enshrine in the constitutions. Although, the President is expected to appoint the Auditor-General but he must be appointed with the consent of the parliament.[45] Consequently, the Auditor- General can not be removed from office, except if the executive has the consent of the parliament. Some systems advance further, by spelling out conditions under which the Auditor – General can be removed as in Malawi and Kenya systems. To boost the independence of the Auditor-General some constitutional powers are granted. Two traditions of the constitutional powers are identified from the review of several constitutions. First, is the Anglo-Saxon tradition known as an 'office model' The model is based on the Auditor-General who only reports to the parliament who in-turn is tasked with scrutinizing the report and taking appropriate action as deemed fit. This is widely practiced by Anglophone countries as in Zambia, Malawi, Namibia, and Kenya[46]. Second, is the French tradition created in 1807 by Napoleon 1 known as the 'court of audit' The tradition is based on an Auditor-General whose status is that of a court judge. In other words, the office is empowered to prosecute offenders however, subject to appeal at higher courts. Also, examples of the tradition are found in most francophone countries and Germany.[47]

Section III

3.0 <u>The Legal Framework for Legislative - Executive Relations in the Budgetary Process in Nigeria</u>

The 1999 constitution provides for a presidential system and a federal structure. The country comprises of the federal government, 36 states governments and 774 local government councils.[48] Chapter 1, Part 1 (4 & 5) of the constitution provides for the powers of the executive, legislature and the judiciary at all levels of government. The legislature at the federal level comprises of two houses (bicameral)

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[44] Article 114* of the Basic Law of Germany
[45] This implies that the parliament must satisfy themselves of the character of the person to be appointed.
[46] Article 105 of 1992 Kenya's Constitution, Article 117 of Zambia's 1996 constitution etc.
[47] Article 114* of the Basic Law of Germany
[48] Chapter 1 Part 1, Section 2 of Nigeria's 1999 constitution.

i.e. the Senate (upper house) and the House of Representatives (lower house) while in the states it provided for one house (unicameral) i.e. State Houses of Assembly.[49]

The 1999 constitution also established the consolidated revenue fund (CRF) at the federal and state government levels and by implication, no money can be withdrawn except with the approval of the National Assembly for the Federal Government and State Houses of Assembly for the state governments.[50] Sections 81 and 121 of the constitution empower the President and the State Governors to draft appropriation bills and lay it before the National/State House of Assembly at any time, in each financial year.

The constitution in granting the power of drafting the budget to the President/Governors did not specify the time of which the budget will be submitted. The problem arising from this inadequacy of the constitution is the late presentation of the draft budget to the parliament and the subsequent late approval. This development has implication for the macroeconomic stability since federal budgets determines the direction of the economy and affects private sector investment and production decisions. The problem was acknowledged by President in his remark during the signing of the 2000 Appropriation Bill (Obasanjo,O., 2000)

The parliament is empowered either to reject or approve the budget. The implication is an unlimited power of amendment[51] . Thus, the constitution stipulates where the President or a Governor withholds assent, the appropriation bill is passed into a law with two- thirds majority of the parliament after 30 days of the approval. In addition, the constitution also, provided that supplementary estimates must be approved by the parliament.[52] The essence of this provision is to ensure fiscal discipline in the use of public funds.

[49] Chapter 5 , Part 1(E) and Part 2(E) of Nigeria's 1999 constitution

[50] The consolidated revenue fund refers to an account in which receipts of the tiers of government from both the federation account and internal generated revenue are paid into- Chapter 5 parts 1 & 2 section s 80 & 120 of the 1999 constitution.

[51] Section 59 (1) of the 1999 constitution

[52] Section 81(4) in respect of the Federal Government and Section 121(4) in respect of state governments of the 1999 constitution.

The constitution mindful of the consequence of delay in the passage of a budget also, made provision for an interim expenditure in the event that the budget approval was delayed. Thus, the President/ State Governors are empowered for a maximum period of six months to incur expenditure when the appropriation bill is not approved before the commencement of the new financial year.[53] The amount to be spent will not exceed the amount approved in the preceding budget and covers expenses for services of government. The constitution however, did not clarify whether the interim expenditure is restricted to recurrent expenditure or cover both recurrent and capital expenditure. Nonetheless, the provision for a six-month period differs from the practices in other constitutions, which is around an average of between 3 to 4 months.

The power of implementation of the budget rests with the President and the Governors.[54] The President and the Governors are empowered to appoint ministers/ commissioners for the various implementing ministries, departments and agencies. The parliament exercises control over the executive through its consent on the appointment of the ministers/ commissioners; and the power of oversight function. The parliament can verify projects under execution by the various ministries, departments and agencies. To perform this function, the parliament is granted powers by the constitution to invite any minister or commissioner or any other government official to appear before it to explain the conduct of his ministry or when such a ministry is under discussion.[55] The constitution made it possible for the parliament to constitute sectoral committees to carry out the oversight function, having the right to investigate the disbursements of money appropriated or to be appropriated by the National Assembly/ the State House of Assembly.[56]

However, there was no provision that the Accountant - General of the Federation and the State Accountant-General should provide regular reports to the parliament and publish it for the consumption of the general public as a guarantee

[53] Sections 82 & 122 of the Nigeria's 1999 constitution
[54] Sections 142 and 192 of the 1999 Constitution
[55] Sections 67(2) & 108(2) of the 1999 constitution
[56] Sections 88(1,ii) & 128(1,ii) of the 1999 constitution

of fiscal transparency except the submission of financial reports to the Auditor-General. In addition, the constitution did not provide a specific time frame in which the Accountant-General will furnish the Auditor-General the financial report.

The legal provisions established the post of the Auditor - General for the purpose of auditing of public accounts of the federal and state governments.[57] The Auditor - General is also expected to audit or appoint auditors for government statutory corporations, commissions, authorities, agencies including all persons and bodies established by a law of the National or the States' Houses of Assembly. The Auditor-General is mandated to submit the audit report to the parliament after 90 days of receiving the Accountant - General's financial statement. The Auditor-General is appointed by the President or the Governor but with the consent of the National or the State House of Assembly, respectively. Also, the Auditor - General cannot be removed from office, except for attaining the retirement age. If there is need for his removal, it must receive the consent of the parliament.[58] There was no mention of reasons that would warrant his removal as in some other constitutions. The office also lacks the power of prosecution as all reports are submitted to the parliament. The parliament is granted powers to summon or issue warrant of arrest of any person mentioned in an audit report.

From all indications, the power of the parliament over budgetary matters rests with the two houses of the National Assembly, in the case of the Federal Government. This differs from the practice in other systems where the power over budgetary matters resides largely, on the lower houses. Therefore, in the event of dispute over appropriation bill resulting in divergence of the amount approved, then the Senate President shall within 14 days, after the passage of the bill, call for a joint meeting of the finance committees of the two houses to reconcile the dispute. Again, in the event that the joint committee of the parliament failed to resolve the

[57] Sections 85(1i) & 125(1) of the 1999 constitution

[58] Sections 86 & 126 of the 1999 constitution

dispute, the bill shall be presented to the joint sitting of the National Assembly for their consideration[59].

Section 4

4.0 Empirical Findings:

The empirical findings from the questionnaires administered and personal interviews are presented in this section. The findings relate to the following

- **The government budgetary procedure at the federal and state levels;**
- **The legislative organization for the budgetary process at the federal and state governments;**
- **Areas of conflicts between the legislature and the executive.**

4.1 Government Budgetary Procedure in Nigeria

The financial year in Nigeria is the same as the calendar year. Figure 1 show the government budgetary cycle at both the federal and state governments. The budgetary cycle begins with the articulation of the budget policies and objectives by the President /Governors and the executive councils. The Budget Department realizes these policies and objectives by coordinating the budget formulation from the ministries. First, the Budget Departments sends out call circulars to ministries aimed at obtaining each ministry estimates of revenue and expenditure. The ministries prepare individual budgets under sub-headings of revenue, recurrent and capital expenditure based on guidelines contain in the call circular. Second, the Budget Department aggregates the estimates from the ministries in a form of consolidated estimates of government revenue and expenditures.

The Federal Government budget is reviewed by the Federal Executive Council (FEC). Also, the President presents the budget at the National Council to intimate the State Governors on the direction of the economy. The State

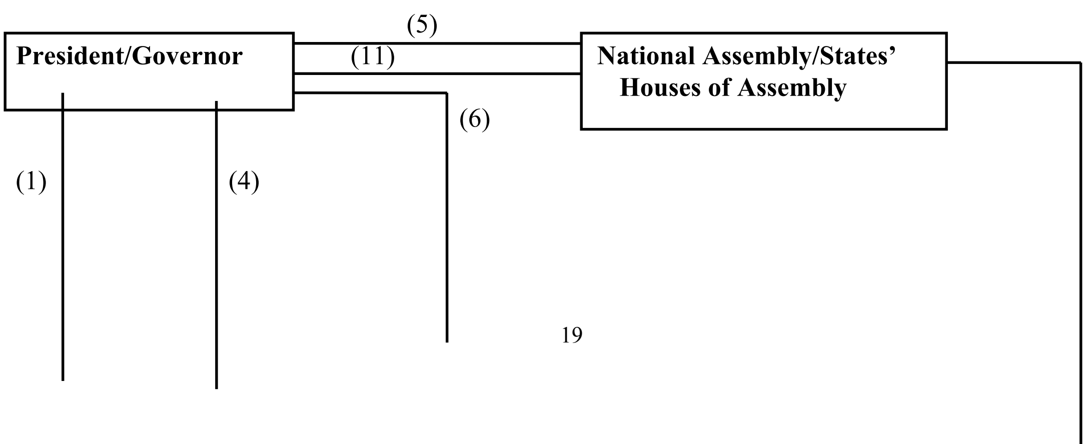
[59] Section 59(3,4,& 5)

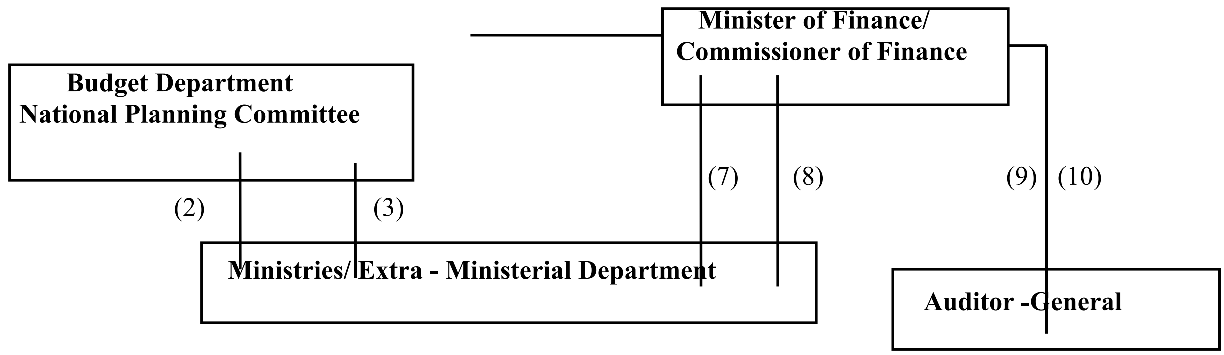
Government budgets are reviewed at the State Executive Council meetings (SEC). After the approval of the Federal Executive /State Executive Councils, the budget is presented to the National and State Houses' of Assembly, respectively. The presentation of the budget to the National Assembly is done at a joint sitting of the two houses.

The legislative debate of the budget commences after the presentation of the budget and after which the budget is approved. This is followed with the signing of the approved budget into law known as 'Appropriation Bill'. The next stage involves the Minister /Commissioner of Finance circulating the approved budget to the various ministries for implementation. It is important to note that the parliament makes no any inputs into the budget during the preparation of the budget, apart from the parliamentary budget which is submitted by the Clerk of the House. In reference to the questionnaire, all the party leaders interviewed admitted that no party in the house submits any inputs during the preparation of the draft budget.

During the implementation, the individual ministries make regular reports to the Ministry of Finance which is tasked with the scrutinizing and consolidation of the reports. At the end of the financial year, the consolidated report is submitted to the Auditor-General by the Accountant-General. The auditing is carried out by the Auditor-General who submits the audit report to the parliament. The parliament is tasked with the scrutinizing and taking appropriate actions on the reports. The final report of the parliament on the audit report is referred to the President/Governor for implementation.

Figure 1
Nigeria's Budgetary Process



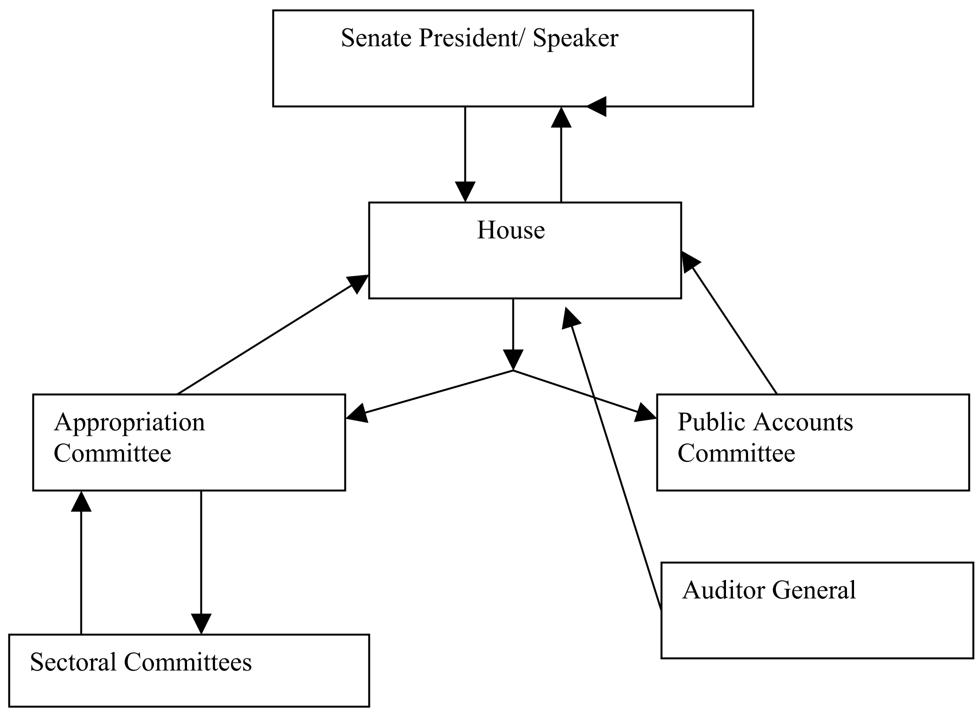


4.2 Legislative Organization for the Budgetary Process

The discussion here will focus on the parliamentary organizations at the National and the State Houses of Assembly.

Figure 2 represents a typical organizational chart of the parliament for the purpose of the budgetary process. Each house has an Appropriation and Public Accounts Committees. These committees are the nerve centres for legislative activities of the federal and the state budgets. Thus, they are the key players in the costing of the financial requirements of federal and state mandates; tax issues, and other matters relating to intergovernmental fiscal relations. On the other hand, the Public Accounts Committees are the major players in the evaluation of approved financial requirements of federal and state mandates and other matters relating to intergovernmental fiscal relations.

Figure 2:
Legislature Organization for the Budgetary Process



The legislative activities in the parliament begin after the presentation of the budget by the President/Governor. The Senate President/Speakers lay the budget at the floor of the house for the first reading during which there are debates on the general policy framework and objectives of the budget. During the reading and debates, the party leadership coordinates the debates of their members which are largely, influenced by the constituency interest. The budget document is therefore, referred to the Appropriation Committees of the houses after the first readings. Generally, the houses are organized on committee basis, handling each ministry and other important areas of concern.

The Appropriation Committees implement their mandates of scrutinizing the budgets through the sectoral committees which liaises with the respective ministries to ascertain the appropriateness of their estimates. The committees receive copies of the draft budget of their respective areas of supervision from the Appropriation Committees. The committees' assignments are usually, prepared in a form of proceedings after consultations with the relevant ministries, stakeholders, constituencies and public hearings[60]. The committee's assignment in most of the cases, takes 2-3 months to complete the work (Table 1). The number of sittings varies from 4 to 10 sittings depending on the size of each ministry and parastatals under the committee's supervision. Each committee prepares a final set of suggestions indicating the amendments made in the draft budget and submits to the Appropriation Committee.[61]

The Appropriation Committees commences work in parliamentary sittings normally lasting about 3 months. The debates are based on the suggestions of the sectoral committees. The debates are taken item by item and in some occasions the committee chairmen and the relevant ministry officials are invited to clarify issues in some grey areas. The committee prepares a substantial set of recommendations for the plenary session of the entire house. The recommendations are supported with an item by item overview of the proposed changes against the provisions of the draft budget as well as the summary report of the sectoral committees. The membership of the committee is largely dependent on the number of the representations in the house. For example, in the National Assembly, the membership of the committee in the House of Representatives is made up of 41 members while in the Senate it consists of 13 members. In the State Houses of

[60] This information was obtained from the structured questionnaires of the several committees in the National Assembly and the State Houses of Assembly visited. For instance the Senate Committee on Health agreed that the function of the committee is performed by inviting the relevant officers in the Ministry of Health and the parastatals, talking to the press, NGO's and discussing with the constituencies

[61] The Chairman, Senate Committee on Health and The Chairmen, Delta State House of Assembly Committee on Environment and the Niger State House of Assembly Committee on Education agreed that they have the unlimited powers to adjust upwards or downwards any item of the budget in their respective sectors. Generally, this adjustment is determined by the needs of the sector and not based on collusion with the respective Ministries as claimed by the Executive and other political commentators.

Assembly, membership varies from 8 to 15 members. In each house, the chairman is a member of the party with majority representatives.

Following, the finalization of the committee report on the draft budget the remaining time is consumed by debates in the second and third readings in the entire house. During the readings, the constituency interest also, played an important role. However, as expected the debates during the readings could have offered each party a chance of projecting its broader policy stance against future elections. Perhaps, this is as a result of the lack of experience in political debates in the country due to the long military rule.

However, in the case of the National Assembly, a joint sitting of the Appropriation Committees of the two houses is called to resolve differences (if any), arising from the two set of approvals. The harmonized approved budget is presented to the two houses separately. The third reading at this stage serves to pass the bill. After agreements the final draft is send to the President for his final assent.

The Public Accounts Committees in the National Assembly have their Chairmen from the opposition party in the Houses as required by the house rule and procedure. The members are 13 in the case of the Senate and 22 in the House of Representatives. The membership of the committees cuts across parties. Thus, the Public Accounts Committees are distinct from the Appropriation Committees. At the State Houses of Assembly, the Chairmen in most cases were from the opposition party while membership of the committees varies from 8 to 12.

However, some differences were observed in some of the states. For instance, in the state where there was no opposition, the Chairman of the Public Account Committee is also a member of the majority party in the House. An example is Niger State House of Assembly where there was no opposition as all members were from the majority party and as such the Chairman of the Public Accounts Committee was also, a member of the majority party.

The reports of the Auditor – Generals are submitted to the parliaments which are then referred to the Public Accounts' Committees[62]. The committees invite the relevant ministries and the high- ranking officials including the relevant officials of the Ministry of Finance for discussions. Finally, the committee prepares its report with relevant recommendations and submits to the entire house[63]. The adoption of the report in the house implies that the report is submitted to the President/ the State Governors for implementation of the recommendations of the legislators.

4.3 Areas of Legislative – Executive Conflicts in the Budgetary Process

Several areas of conflicts between the legislators and the executive were identified in respect of the budget approving, implementation and evaluation processes from the questionnaires and personal interviews. These conflicts are discussed below:

First, is the conflict resulting from the late submission of the draft budget which always leads to the late approval of the budget[64]. For instance, the 2003 federal budget was presented in mid-November, 2002 with an expectation that it will be approved by 1st January, 2003. Unfortunately, the draft budget was approved in end-May while it was signed into a law in July, 2003. The reason adduced by the legislators was that they needed enough time to study the budget brought about by the importance they attached to the budget. For instance, about 100 percent of the party house leaders interviewed admitted that the federal and state budgets are very important for growth.

In terms of time required by the legislators for the budgetary process, 53.6 percent of the Committee Chairmen suggested that a minimum of 2 months is required to complete sittings on the budget while 42.9 percent suggested 3 months

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[62] See the 2001 Federal Audit-Report submitted to the National Assembly by the Federal Auditor-General

[63] The Chairman House Committee on Public Accounts, House of Representatives asserted to this procedure and refers us to the Report on Public Accounts submitted to the House Plenary Session for debate.

[64] For instance, the 2003 Federal Budget was approved at end – May 2003 and signed into Law in July, 2003.

and only 3.6 percent indicated 4 months. Taking a weighted average, this implies that the committees needed about 2 months and 2 weeks to complete the review of the draft budget. Also, 100 percent of the respondents of the Appropriation Committees interviewed indicated that 3 months is appropriate to complete the budget approval process. Perhaps, taking an average of the time required by the sectoral and the appropriation committees, we can conclude that the legislators need about 3 months to complete their own portion of the approval process. The implication is that the budget must be submitted at least by the end of September in any financial year.

Second, the unilateral amendment of the outcomes of the draft budgets by the parliament is an area of conflict[65]. It was observed that since the transition, the Federal Budget has continued to be approved under circumstances of higher budget deficits to be financed by imaginary revenue sources. For example, in 2000, the draft budget deficit was N82.7 billion or 2.2 percent of GDP while the approved budget by the National Assembly was N240.1 billion or 6.3 percent of GDP. Despite the arguments that followed this action, in 2001, the approved budget deficit was further increased to N318. 9 or 6.8 percent of GDP compared with a draft budget deficit of N62.8 billion or 1.3 percent. The most disturbing approval was the review of the draft budget in 2002 from a deficit of N192.3 billion or 3.4 percent of GDP to N443.3 billion or 9.3 percent of the GDP. However, the executive was also, guilty of this offence as the actual outcomes were higher than the draft budget. In 2002, for example, the budget deficit was higher than the draft budget deficit, from 3.4 percent of GDP it increased to 6.2 percent (Table 2).[66]

TABLE 2: FISCAL OUTCOMES OF THE FEDERAL GOVERNMENT APPROVED BUDGETS.

[65] See 2002 Federal Government Budget.
[66] For instance, the 2001 Budget comprised of revenue sources such as privatization , loot recovery etc which nobody was sure that it will materialize.

DRAFT BUDGET	2000	2001	2002
Budget Deficit(NB)	82.7	62.8	192.3
% of GDP	2.2	1.3	3.4
APPROVED BUDGET			
Budget Deficit(NB)	240.1	318.9	443.3
% of GDP	6.3	6.8	9.3
ACTUAL BUDGET			
Budget Deficit(NB)	103.8	221.0	355.1
% of GDP	2.1	4.0	6.2

Sources: Federal Government Budgets and CBN Annual Reports

Empirical findings indicated that about 100 percent of the legislators interviewed claimed that the increases were necessary and proper and the budgets were increased based on the constitutional power of the parliament. However, it was observed that these extensive changes were never discussed with the President before voting. Thus, the lack of dialogue in this area heightens the intensity of the conflicts. Perhaps, if there were discussions on the amendments, the extent of the conflicts could have been reduced.

One factor affecting the increase in the budget was the inclusion of the constituency projects in the approved budget since 1999. The constituency projects are basically projects initiated by the individual representatives and senators aimed at providing improve social facilities in their constituencies. The idea is based on an early assertion that the representatives are in a better position to know the problems of their communities than any other person. This is laudable but several issues were associated with the projects. First, there was no constitutional provision for the individual representatives to prepare budgets for the community.

Also, the belief that the projects will be sponsored and supervised by the legislators created some suspicions. Another issue was that the parliament was usurping the presidential powers of budget preparation and implementation. However, all the legislators interviewed admitted that they were convinced in the preparation of the constituency budget but the intention was not for them to award the contract. Also, they argued that the supervision is not new, since they have the constitutional power for the supervision of the activities of the executive.

Another area that lacks dialogue is the adjustments usually effected in respect of the sectoral allocations and between recurrent and capital expenditure. The most difficult problem in public sector budgeting is allocation of scarce resources among competing needs. The National Assembly made several attempts to cut down on recurrent expenditure particularly, salaries of civil servants, overhead costs and domestic debt service for the benefit of the capital budget. However, the actual outcomes of expenditure over the years have indicated that there were serious shortfalls for salaries and domestic debt service payments. The outcome of capital expenditure also indicated a lower expenditure than what was provided (Table3). The perception of the legislators was that higher capital budget directly affects growth and will enhance rapid poverty reduction.

TABLE 3: BUDGET ALLOCATIONS BY THE FEDERAL GOVERNMENT APPROVED BUDGETS.

DRAFT BUDGET	2000	2001	2002
Capital Budget(N billion)	170.0 (36.2)	341.2 (45.1)	297.2 (35.3)
Recurrent Budget(N billion)	300.0 (63.8)	414.0 (54.9)	543.6 (70.6)
APPROVED BUDGET			
Capital Budget(N billion)	311.6 (47.5)	350.0 (32.3)	547.9 (53.4)
Recurrent Budget(N billion)	341.5 (52.5)	571.7 (67.7)	477.4 (46.6)
ACTUAL BUDGET			
Capital Budget(N billion)	239.5 (34.1)	438.7 (43.1)	321.4 (32.6)
Recurrent Budget(N billion)	461.6 (65.9)	579.3 (56.9)	663.5 (67.4)

Sources: Federal Government Budgets and CBN Annual Reports

Note: The figures in parenthesis are in percentages

Third, an area of conflict is the budget of the parliament. There is no clear provision for the funding of the legislature in the constitution as it is the case in the Judiciary. However, because of the peculiarity of the Nigeria's politics, this had generated conflicts between the two arms of government. Parliamentary budgets are prepared by the Clerks of the Houses in consultation with the Appropriation Committees and submitted to the President/Governors. In many instances, the parliament has changed the parliamentary budgets during the approval process of the draft budget. Empirical findings indicated that this derived from the need to provide enough resources for the constitutional role assigned to the parliament. This is because no parliament can engage effectively with the constitutional role without having the prerequisite resources to do so. Nevertheless, the bone of contention is that the changes were not discussed with the executive before voting as admitted by 100 percent of the questionnaires from the Appropriation Committees. Thus, these actions have affected the relationship between the two arms of government while it

has contributed largely, to the delay in the passage and the signing into laws the annual appropriation bills.

The use of parliamentary oversight function has also, generated conflicts in many occasions. This was acknowledged by the President during the inauguration of the National Assembly on June 5th 2003. He remarked that the executive will not succumb to threats and intimidation by the National Assembly through the abuse of the oversight function. However, a review of the legislator's perceptions at the federal and state levels showed different line of thinking as they regarded the oversight function a constitutional power. Nevertheless, about 34.0 percent of the legislators equally, admitted that there may be abuses by some committees but it does not remove the need for checks and balances.

The lack of proper information flow from the Accountant-General during the budget implementation stage is a source of conflict between the executive and the legislature. This relates to the provision of adequate information on the actual revenue and expenditure. The absence of accurate information has generated some suspicions over the budget implementation[67]. In several occasions, different and inconsistent data of actual revenue and expenditure were released by the two arms of government. In addition, the Accountant - Generals at the federal and sate governments have compounded the problems because they have also, failed to establish transparently, the data on the governments fiscal operations at regular intervals for the consumption of the legislators and the general public. Findings from the legislators showed that 100 percent admitted that the information from the executive on the budget implementation as it relates to accurate information on revenue and expenditure from the Accountant-Generals were inadequate. For instance, they admitted that it is a Herculean task obtaining accurate revenue statistics especially, on the oil revenue inflow into the 'Federation Account'. They argued that the absence of this information flow on government income and

[67] Most members interviewed expressed their expression on a complete blackout by the executive particularly, the Accountant-Generals who at several occasions have treated the parliament invitations to explain the modalities of the budget implementation with contents.

expenditure heightened the suspicions and had remained a major area of conflict between the executive and the legislature.

Finally, conflict over the budgetary process has arisen from audit reports; delay in the auditing and submission of the reports. For example, the ratings of the perception of the Chairmen of the Public Accounts Committees showed that 100 percent scored the performance of this stage of the budget process as inadequate. The situation is even worse with the state governments as some states have arrears of 2 to 5 years of audit. Reasons offered for the poor compliance with the audit process were as stated below:

- **The perception of the executive over audit queries as unnecessary attack on the government thereby, generating conflicts;**
- **The late submission of the Accountant- Generals' financial statements of accounts to the Auditor-Generals;**
- **The insufficient fund allocated to the Office of the Auditor-Generals; and**
- **The constitutional provisions which failed to specify a time frame within which the Accountant-General must report the financial statements to the Auditor-General and the general public.**

The legislators therefore, suggested a time frame in which the audit report should be submitted to the parliament. The majority of the respondents (60 %) of the legislators from the federal and state suggested that the audit report should be submitted 6 months after the end of the financial year while 40 percent recommended 10 months. In addition, to deal with unnecessary poor perception of the executive of audit queries from the parliament, majority of the legislators (54.6

%) suggested that the status of the Auditor-General should be elevated to that of a court judge. With elevated status of the Auditor-General, the cases of fraud and misconduct will be properly dealt with in a judiciary process before the final report.

Section 5

5.0 Conclusion:

Evidences from this paper indicated that the legislators have wide scope of powers for legislative activism. This is reflected in their constitutional powers over the budgetary processes. These powers are unlimited amendment powers of the draft budget, oversight functions and the control of the appointment of the Auditor – General. This is reasonable as it is intended to provide checks and balances and also, ensure the entrenchment of fiscal accountability and transparency in the budgetary processes.

However, the recent performance of the process of draft budgets approval in the new dispensation shows signs of problems caused by a wide range of conflicts between the legislators and the executive. These conflicts resulted to higher budget deficits and unnecessary delays. Both the executive and the legislators share in the blame of these conflicts as they have interpreted their constitutional role from different angles. Therefore, they must exercise caution in the budget approval processes, taking the general interest of the public in the discharge of such powers. Thus, the excessive use of these powers on their part will cause more havoc on the economy and could result in macro economic instability. Perhaps, a bogus budget creates a bad impression to the general public when it is not implemented. However, the paper identified two major causes of these conflicts and they included the constitutional provisions as well as personal assertion of powers. To deal with some of these issues the following recommendations are made:

Recommendations

- **Although, no constitutional provision was made for the timing of the submission of the budget. However, the executive should appreciate the need for timely approval of the budget. In order, to provide for much time to allow for consultations and further analysis by the parliament, we recommend that the executive should submit the budget three months before the commencement of the financial year (end-September) as suggested by the party leaders in the house(75.0 %). The parliament as a matter of urgency must complete the process of approval by the 31st December.**

- **The inclusion of constituency projects is partly, based on the enthusiasm of the members to develop those areas they represent. However, the principle of budgeting requires that projects to be included in an annual budget must have passed through some economic tests before political considerations. First, the cost of the projects must have been ascertained, its viability and location as well as the analysis of the social cost –benefit analysis must be carried out. We therefore, recommend that the executive should harmonize the concerns of the members of the parliament and plan the inclusion of these projects over a period of the mandate of the administration.**

- **The Accountant - Generals should be made to prepare the financial statements and forwarding the same to the Auditor - Generals at least four months after the end of the financial year in all the three levels of government. Thus, serious sanctions should be imposed on any Accountant- General that failed to meet the required provision. When this is done the audit reports could be submitted to the parliament at least eight months after each financial year. In addition, this will help to improve the budgetary process as experience acquired during audit report re-examination by the parliament could add value during the consideration of the new budget.**

- **To further strengthen the legislative role of the parliament, adequate financial resources of the legislature should be worked out so as to provide adequate resources for the constitutional assignment. To easy the budget approving**

process, the parliament should source independent information. Therefore, the different arms of the legislature should set up its own independent 'Budget Office', charged with responsibilities of running the secretariat as well as providing research services.

- **Finally, government should improve on the fiscal transparency. Regular and accurate information should be given to both the legislators and the general public on income and expenditure of government.**

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