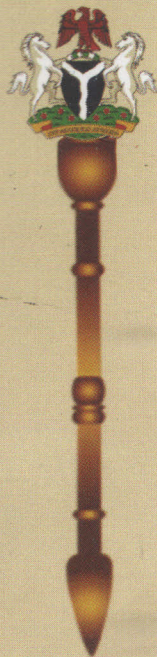




**NILDS**  
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# CONTROL OF PUBLIC FUND BY THE LEGISLATURE: A COMPARATIVE ANALYSIS OF NIGERIAN NATIONAL ASSEMBLY, AMERICAN CONGRESS AND BRITISH PARLIAMENT

Olufemi Abifarin\*, N.A.O Ijaiya\*\* and J.O. Olatoke\*\*\*

## Abstract

*This paper looks at the power of the National Assembly (NASS) to control the purse in Nigeria. It looks at the constitutional establishment of the NASS and the powers conceded to it in the Constitution on appropriation and public funds generally with a view to probing or interrogating the extent, scope and limit of these powers. It looks at other jurisdictions like Britain and America and concludes that the NASS has limitless power with regard to ensuring transparency, probity and accountability in the administration of public funds in Nigeria. The National Economic Council (NEC) is neither an alternative to the NASS nor a rival body to the National Assembly by the tenor of the constitution.*

*Keywords: Congress, Control, Legislature, Parliament, Public fund.*

## INTRODUCTION

It is necessary to interrogate the powers of the NASS on control of public funds in Nigeria because of the raging controversy on whether the NEC can approve spending of money by the federal government without passing through the National Assembly which is the proper institution vested with power of Appropriation and power to control public spending in Nigeria.<sup>1</sup>

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<sup>1</sup> S.M. Abdulmalik, 'The 1999 Constitution and the law making organ of the Government in Nigeria, Topical Issues in Nigerian Law' J.A.M. Agbonika (eds.) Ilorin 2016, p. 715

Since the beginning of this Fourth Republic, the executive arm of government as represented by the federal government has been making extra-budgetary spending, from Excess Crude Account, which is illegal by virtue of the fact that there is no law made by the National Assembly to create the Account.<sup>2</sup> The federal government also granted bailout, including sharing of Paris Club refund without recourse to the National Assembly which is the institution vested with power by the Constitution to appropriate, control public fund, including revenue and contingency fund.<sup>3</sup> This paper looks at the establishment of the National Assembly, its powers as specified by the Constitution to make law generally, its power on money bills or appropriation bill, control of public fund, contingency fund, public revenue and its power to approve remuneration for public office holders in Nigeria, vis-à-vis the power of the National Economic Council which is also a creation of the Constitution but a mere advisory body.

### **The National Economic Council**

The NEC is an executive body set up by the Constitution of the Federal Republic of Nigeria.<sup>4</sup> The body comprises of the Vice President as the Chairman, the Governor of each state of the federation and the Governor of Central Bank of Nigeria. The Council has power to advise the President concerning the economic affairs of the Federation and in particular on measure necessary for the coordination of the economic planning efforts or economic programmes of the various Government of the federation.<sup>5</sup>

From the above provision of the Constitution, the NEC is a mere advisory body to the President on economic matters and not an alternative body to the National Assembly on approval of public finance, budget, or supplementary budget. Therefore, its approval of withdrawal from Excess Crude Account is illegal and unconstitutional and consequently null and void.<sup>6</sup>

The Excess Crude Account is itself illegal in so far as that account is not approved by the NASS in accordance with the provisions of the Constitution.<sup>7</sup> Any money in the Excess Crude Account ought to be in the

<sup>2</sup> 'The Excess Crude Account and its Controversies', Available at

[www.tribuneonline.com>politics](http://www.tribuneonline.com>politics)

<sup>3</sup> Section 80-83 of the 1999 Constitution of Federal Republic of Nigeria 1999

<sup>4</sup> Section 153

<sup>5</sup> Third Schedule part I (H) of the 1999 Constitution of the FRN as amended.

<sup>6</sup> Section 153 & Third Schedule part I (H) read together

<sup>7</sup> Section 59, 80, 81, 82 & 83 of the 1999 Constitution of Federal Republic of Nigeria

Federation Account subject to the approval of the National Assembly to create an account to be named Excess Crude Account.<sup>8</sup> The NASS is given wide and sweeping powers on government Revenue and Expenditure in Nigeria, and the power cannot be taken away by anybody. The power given to the NASS to control public funds is to ensure transparency and probity in governance.

### **Establishment of National Assembly**

The National Assembly is the highest law making and representative body in Nigeria.<sup>9</sup> It is the constitutional institution vested with power to make law for peace, order and good government of Nigeria.

According to the provisions of the constitution there shall be a National Assembly for the Federation, which shall consist of a Senate, and a House of Representatives.<sup>10</sup> This provision shows the National Assembly is a bicameral legislature. A bicameral legislature is a Representative Assembly that has two chambers usually referred to as lower and upper Houses as in Britain.<sup>11</sup>

The Constitution goes further to describe the composition of the National Assembly by stating that the Senate shall consist of three senators from each state and one from the Federal Capital Territory, Abuja.<sup>12</sup> This provision informs the present composition of the Senate which stands at one hundred and nine (109) members.

The Senate is led by a Senate President and assisted by a Deputy Senate President both of who shall be elected by members of that House from among themselves.<sup>13</sup> However, there are other officers of the Senate such as Senate majority leader or Senate leader who is the leader of the members of the party that has the highest number of senators. There is also Senate whip etc., which are offices created by the Senate itself under its implied powers and the constitution.<sup>14</sup>

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<sup>8</sup> Section 162

<sup>9</sup> Section 47 (1) & 92 of the Constitution of Federal Republic of Nigeria 1999

<sup>10</sup> Section 47 (1)

<sup>11</sup> Olufemi Abifarin & D.F. Atidoga A Critical Analysis of the Scope and Limits of Legislative power of National Assembly in Nigeria, Confluence Law Journal vol. 1 No. 1 (2006) p. 12

<sup>12</sup> Section 48

<sup>13</sup> Section 50

<sup>14</sup> Section 49.

The House of Representatives shall consist of three hundred and sixty members representing constituencies of nearly equal population as far as possible, provided that no constituency shall fall within more than one states.<sup>15</sup>

The House of Representatives shall be led by a speaker and assisted by a Deputy speaker both of who shall be elected by the members from among themselves. The House of Representatives also has some other officers like House leader and his deputy, House whip etc. These positions are not creations of the constitution but are created by the House for its internal organisation under its implied powers and section 60 of the constitution.

It is noteworthy that the National Assembly in Nigeria is completely detached from the executive unlike in America where the Vice President who is a member of the executive is the Senate President who has a right to sit in the Senate or preside over the Senate even though a president of Senate pro tempore is usually elected to preside over the Senate in the absence of the Vice Presidents. The Nigeria situation is also in contrast with that of Britain where the Prime Minister and, other ministers of government are chosen from the House of Common.<sup>16</sup> Whereas any member of the National Assembly who is chosen as a minister by the president shall cease to be a member of the National Assembly as from the date of his appointment.<sup>17</sup>

#### **House of Assembly of a State**

There shall be a House of Assembly for each of the states of the Federation<sup>18</sup>. Unlike the National Assembly, this is a unicameral legislature i.e. (a single chamber legislature). The House of Assembly of a state shall consist of three or four times the number of seats which the state has in the House of Representatives divided in a way to reflect, as far as possible, nearly equal population, provided that a House of Assembly shall consist of not less than twenty four and not more than forty members<sup>19</sup>.

There shall be a Speaker and Deputy Speaker of a House of Assembly who shall be elected by the members of the House from among themselves<sup>20</sup>. There are other Officers of the House such as House Leader and his

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<sup>15</sup> Section 49

<sup>16</sup> S.G. Richards Introduction to British Government Macmillan Press London p. 67

<sup>17</sup> Section 90

<sup>18</sup> Section 91

<sup>19</sup> Section 91

<sup>20</sup> Section 92 *INEC v. Musa* 2003 3 NWLR (Part 806) 72

Deputy, chief whip and his deputy, minority leader, minority whip e.t.c. These positions are not creations of the constitution but are created by the House under its implied power under section 101 of the constitution.

### **Legislative Power of National Assembly**

The power of the National Assembly to make law in Nigeria is spelt out in section 4(1) and (2) and section 4(4), while section 4(1) & 2 confers exclusive power on the National Assembly to make law on items or matters contained in the Exclusive Legislative List. Section 4(4) further confer power on the National Assembly to make law concurrently with the State Houses of Assembly on matters in the Concurrent Legislative List as spelt out in part II of the second schedule to the constitution. By the tenor of sections 4 (1) & 2 and 4 (4) the National Assembly has wider legislative powers than the State Houses of Assembly. But that does not mean that the National Assembly has absolute or arbitrary legislative power. The legislative power of the National Assembly is still circumscribed by the provisions of the constitution and the National Assembly cannot confer more legislative power on itself than that contained in the constitution<sup>21</sup>.

The National Assembly cannot extend or expand its legislative power to include legislating for a State or Local Government. It does not have broad, vague or unlimited powers but the National Assembly may exercise such powers that was neither expressly granted nor prohibited just as it was held by the Supreme Court<sup>22</sup>, of the congress of America. "This congress is not confined to the powers named in the constitution. Congress may also exercise powers, which may be reasonably implied from the enumerated powers".

It is also arguable that the concept of enumerated power as limitation to the legislative power of the National Assembly could be excused on issues of foreign relations on ground of inherent powers. The power to wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties if they had never been mentioned in the constitution, would have vested in federal government via the National Assembly as necessary concomitants of Nationality thus in the field of foreign relation, the powers of National Assembly are inherent and therefore not limited"<sup>23</sup>

<sup>21</sup> Ibid

<sup>22</sup> *U.S. v. Curtiss Wright Export Corporation* 1939 229 us 304 *Marryland v. McCullock*

<sup>4</sup> Wheaton

<sup>23</sup> *Attorney General of the federation v. ANPP & Others* 2003 1 EPRI

### **General Mode of exercising Federal Legislative Power**

The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and shall be assented to by the president<sup>24</sup> and a bill may originate from either the Senate or House of Representatives. Where the House where it originated has passed a bill, it shall be sent to other house for passage after which it shall be sent to the president for assent<sup>25</sup> where a bill is presented to the president for assents he shall within 30 days thereof signify that he assents or that he withholds his assent.<sup>26</sup> That means he has vetoed the bill. The president's veto will be overridden by passage of the bill by two-thirds majority of each of the Houses of National Assembly.<sup>27</sup>

### **Mode of Passage of Appropriation Bill**

However, the procedure for exercising federal legislative power on money bill differs and it is governed by section 59 of the constitution under this section<sup>28</sup> appropriation bill will be presented to the National Assembly sitting jointly but each house will consider the bill and pass it separately but where a house refuses to pass the bill within 2 months from the commencement of a financial year, the president of Senate shall within 14 days thereafter arrange for and convene a meeting of joint finance committee to examine the bill with view to resolving the differences between the two houses.<sup>29</sup>

Where joint finance committee fails to resolve differences, then the bill shall be presented to the National Assembly sitting at a joint session and if the bill is passed at a joint session it shall be presented to the president for assent.<sup>30</sup>

Where the president within thirty days after the presentation of the bill to him, fails to signify his assent or where he withholds assent, then the bill shall again be presented to the National Assembly sitting at a joint meeting and if passed by two-thirds majority of members of both houses at such joint meeting the bill becomes law and the assent of the president shall not be required.<sup>31</sup> When this procedure is not strictly adhered to in 1981, the

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<sup>24</sup> Section 58 (1) CFRN

<sup>25</sup> Section 58(2)

<sup>26</sup> Section 58 (4)

<sup>27</sup> Section 58 (5)

<sup>28</sup> Section 59 (1),

<sup>29</sup> Section 59 (2)

<sup>30</sup> Section 59 (3)

<sup>31</sup> Section 59 (4)

Supreme Court nullified the appropriation Act 1981.<sup>32</sup> The National Assembly of Nigeria has unrestricted power on the finance of the Nation.<sup>33</sup>

## **POWERS TO CONTROL PUBLIC FUNDS BY THE NATIONAL ASSEMBLY**

### **Meaning of Public fund**

Money that is generated by the government to provide goods and services to the general public.<sup>34</sup>

It also refers to the funds of every political division of a state wherein taxes are levied for public purposes. The term public fund also covers the revenue or money of a government, state or Municipal Corporation. The funds are generated and distributed on different levels such as the federal level, state level and even local level.<sup>35</sup>

The legislature is also vested with power to control public funds. This exercise of power is exhibited by the legislature through the establishment of Consolidated Revenue Fund; authorization of expenditure from Consolidated Revenue Fund; authorization of expenditure in default of appropriation; contingencies fund; remuneration of the president and certain other officers and audit of public accounts respectively.<sup>36</sup> Be that as it may be, there are some instances where expenditure can be undertaken by the executive arm of government without prior authorization by the National Assembly. For instance the Constitution<sup>37</sup> allows for government spending as authorized by the President, for the purpose of meeting expenditure necessary to carry on the services of the government for a period not exceeding six months or until the coming in to operation of the Appropriation Act whichever is earlier.<sup>38</sup>

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<sup>32</sup> *Attorney General of Bendel State v Attorney General of the Federation* 1981 3 NCLR 1

<sup>33</sup> M.A. Mainoma, 'Can the Legislature alter the provisions of the Budget as presented by the Executive?' *The Guardian* 20 June 2017 p. 42; U. Uwaleke: 'Closing the gaps in the Budget Process' *the Guardian* 31 August 2016 p. 26

<sup>34</sup> [www.businessdictionary.com](http://www.businessdictionary.com)

<sup>35</sup> <http://study.com>academy>publicfund...>

<sup>36</sup> See Section 80, 81, 83, 84, and 85, CFRN

<sup>37</sup> See Section 82 Ibid

<sup>38</sup> Ibid. This section contain a proviso that the withdrawal in respect of any such period shall not exceed the amount authorized to be withdraw from the Consolidated Revenue Fund of the Federation under the provisions of the Appropriation Act passed by the National Assembly for the corresponding period in the immediately preceding financial year, being an amount proportionate to the total amount so authorized for the

Reacting to the above constitutional power of the executive President and Governor, it is submitted that even though the said provisions are aimed at ensuring that every government spending is wise and accounted for, it is still subject to criticism simply because it appears to leave much discretion on the part of the Chief executive (President or Governor) to determine when there has arisen an urgent and unforeseen need for such expenditure.<sup>39</sup>

Furthermore, as part of the exercise of its power of control of public fund, the legislature plays an important role in auditing of public accounts as captured under section 85 (2) of the Constitution. This is with a view to ensuring that public expenditures are justly incurred and discovering any irregularity in public finance. Thus, by the provisions of the above section, the public accounts of the Federation and of all offices and courts of the Federation shall be audited and reported on by the Auditor-General who shall submit his reports to the National Assembly.<sup>40</sup>

By subsection (3) thereof the Auditor General is precluded from auditing the accounts or appointing auditors for government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly, but the Auditor-General shall under (a) (i) of section 85 provide a list of auditors qualified to be appointed by them as external auditors and from which the bodies shall appoint their external auditors, and (ii) guidelines on the level of fees to be paid to external auditors, and (b) comment on their annual accounts and auditor's report thereon. This is a radical departure from the 1979 Constitution which empowered the Auditor-General to audit public accounts of the Federation... "Including all persons and bodies established by law entrusted with the collection and administration of public moneys and assets...."<sup>41</sup> Undoubtedly, the latter provision allows for greater probity and transparency in public finance.

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immediately preceding year. Similarly, this is also provided for under section 122 Ibid for the State Houses of Assemblies. See Olubayo Oluduro 'The Role of Legislature in Combating the Spread of HIV/AIDS in Nigeria', (2009), Igbinedion University Law Journal, Vol. 8, a publication of College of Law, Igbinedion University, Okada, Edo-State at p. 92

<sup>39</sup> See Olubayo, *ibid* at note 33. See also I.A. Ayua, D.A. Guobadia & D. Adekunle D. (eds.) 'Issue in the 1999 Constitution' quoted by Olubayo at p. 92

<sup>40</sup> *Ibid*

<sup>41</sup> See Section 79 (2) 1979 Constitution

### **Establishment of Consolidated Revenue Fund**

Consolidated fund or Consolidated Revenue Fund is a term used in many countries with political system derived from Westminster system to describe the main bank account of the government.<sup>42</sup>

All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.<sup>43</sup>

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 authorised by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of section 81 of this Constitution.<sup>44</sup>

No moneys shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been authorised by an Act of the National Assembly.<sup>45</sup>

No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by the National Assembly.<sup>46</sup>

The term Consolidated Revenue Fund is intended to cover the totality of all public moneys, which maybe, raised or collected or paid into the coffers of the Federal Government (which have not been otherwise provided for in any other sections of the Constitution). It is a special fund in the sense that the Constitution itself specifies what expenses are to be drawn on the fund, but since it represents the largest bulk of all moneys available to the Federation, virtually all expenditure are drawn on it.

However, no expenditure may be drawn on the Consolidated Fund unless:

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<sup>42</sup> [https://en.m.wikipedia.org/wiki/consolidated\\_revenue\\_fund](https://en.m.wikipedia.org/wiki/consolidated_revenue_fund)... Accessed on 6<sup>th</sup> June 2018

<sup>43</sup> Section 80 (1)

<sup>44</sup> Section 80 (2)

<sup>45</sup> Section 80 (3)

<sup>46</sup> Section 80 (4)

- (a) the Constitution specifically authorises it, for example, the salaries and emoluments of judges are charged on the Fund-
- (b) the National Assembly authorises it by passing an Appropriation or Supplementary Appropriation Act –
- (c) the National Assembly authorises it by passing an Act for that purpose.

Indeed, no public money of the Federation can be spent without authorisation by the National Assembly. It is this power to control expenditure of public fund, more than any other, that gives the legislature control over the acts of the other branches of Government, since they all, even the judiciary because only the salaries of the judges are charged directly on the Consolidated Revenue Fund, depend on the Legislature for money to carry out their functions. Indeed, subsection (4) states this in very clear terms and the enforcement of this section is a legislative responsibility.

#### **Authorisation of Expenditure from Consolidated Revenue Fund**

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.<sup>47</sup>

The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund of the Federation by this Constitution) shall be included in a bill to be known as an Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.<sup>48</sup>

The amount standing to the credit of the-

- (a) Independent National Electoral Commission,
- (b) National Assembly, and
- (c) Judiciary,

In the Consolidated Revenue Fund of the Federation shall be paid directly to the said bodies respectively; in the case of the Judiciary, such amount

<sup>47</sup> Section 81 (1)

<sup>48</sup> Section 81 (2)

shall be paid to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the states under section 6 of this Constitution.<sup>49</sup>

If in respect of any financial year it is found that -

(a) the amount appropriated by the Appropriation Act for any purpose is insufficient; or

(b) a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act,

A supplementary estimate showing the sums required shall be laid before each House of the National Assembly and the heads of any such expenditure shall be included in a Supplementary Appropriation Bill.<sup>50</sup>

Any Bill may originate from either Chamber of the National Assembly section 58(2)- and the provision of this section confirms that the Appropriation Bill may "originate" from either House.<sup>51</sup> Although the provision indicates a simultaneous laying of the Bill before each House by the President, in actual practice, the Bill is presented to a joint sitting of the National Assembly. It is, thereafter, left to each House to decide when to start debate and discussion on the Bill. There is actually no provision against each House considering the Bill at the same time. The duty to present the Bill is mandatory and therefore the President cannot refuse to present his budget for the year.<sup>52</sup>

The Appropriation Bill is the annual estimated budget. That is the expenditure of the Government and must specify the exact amounts required for specific purposes. This Executive estimate is subject to reduction or addition as the National Assembly thinks fit. According to Akande, it is unusual to have an overall increase of the total amount estimated but it is not unusual for some heads to be reduced and others increased.<sup>53</sup> The practice in the 8<sup>th</sup> National Assembly is to increase

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<sup>49</sup> Section 81 (3)

<sup>50</sup> Section 81 (4)

<sup>51</sup> In the UK all financial bills had to be introduced in the House of Commons. See Art 1. S.7, Ch. 2 of the Constitution of the U.S.A. which provides that all Bills for raising revenue must originate from the House of Representatives.

<sup>52</sup> See *Alhaji Abubakar Umar v. Governor of Kaduna State* (1981) 2 NCLR 696

<sup>53</sup> Jadesola Akande, 'Introduction to Nigerian Constitution of 1999', (MIJ Professional Publishers Ltd 2000)

various heads of account and decrease some which the president complained about. He was infact reluctant to sign the 2018 budget.<sup>54</sup>

The Executive is allowed to present a supplementary bill at any time during the financial year, if there are any shortfalls in any area. But the National Assembly still has the power to refuse to approve such a supplementary budget.

The power of the National Assembly to control public expenditure is absolute and even the courts cannot challenge the decision of the legislature.<sup>55</sup> The Nigerian Senate has refused to approve an external loan for Nigeria because the details of how the loan will be expanded were not attached to the request.

An attempt to ensure the financial independence of the judiciary has been made. The budget for the Judiciary is normally charged on the Consolidated Revenue Fund but it is now provided that the money shall be paid directly to the National Judicial Council. The same goes for National Assembly, State Houses of Assembly and...

#### **Authorisation of Expenditure in Default of Appropriations**

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

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

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<sup>54</sup> 'Buhari reluctantly signed 2018 Budget', the Nation online.net>breaking-buhari

<sup>55</sup> See, for example, *US v. O. Brien* 391 US 367 (1968) where a taxpayer was denied the right to challenge before the courts the constitutionality of Congress that permits the C.I.A. to account for its expenditures "solely on the certificate of the Director."

the total amount so authorised for the immediately preceding financial year.<sup>56</sup>

The National Assembly is expected to have passed the Appropriation Act by the beginning of the financial year.<sup>57</sup> This presupposes that the Executive presents its budget in sufficient time to allow the Legislature to do a thorough scrutiny within the time limit. It is possible for the Executive to delay the presentation with the intention either of attempting to prevent a thorough legislative scrutiny or to bring into operation this section.

If the latter is the case, then the proviso to the section will not allow the Executive to spend money from the Fund for more than six months and then the authorised expenditure must not exceed the amount given for the same period in the previous year's budget. Although this is the legal position, in practice the chief Executive would normally have some form of understanding with a group of parties in the Legislature which will ensure that deadlock is avoided.

If in fact as is usually the case, the Executive is asking for more money than the previous year, it is in its interest to get the Appropriation Bill passed as quickly as possible. It is the executive that has been presenting the Appropriation Bill to the National Assembly in Nigeria, while the National Assembly not being a rubber stamp is expected to go through the budget before approval.

On the other hand, the Legislature may use the delay in passing the Appropriation Bill as a weapon of control on the Executive. However, while the passing of the Bill is pending, and remains pending into the new financial year, the President has absolute discretion to determine which "expenditure are necessary to carry on services."

### **Contingencies Fund**

Contingency fund is created as an imprest account to some urgent or unforeseen expenditure of government. A contingencies fund or contingency fund is a fund for emergencies or unexpected outflows, mainly economic crises.<sup>58</sup>

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<sup>56</sup> Section 82

<sup>57</sup> The financial year has been changed from the old period of April 1-March 31 to a new period of January 1-December 31 by the Financial Year Act 1980. The Commencement date is April 1, 1980

<sup>58</sup> <https://m.economictimes.com>...budget>

The National Assembly may by law make provisions for the establishment of a Contingencies Fund for the Federation and for authorising the President, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Fund to meet the need.<sup>59</sup>

Where any advance is made in accordance with the provisions of this section, a Supplementary Estimate shall be presented and a Supplementary Appropriation Bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.<sup>60</sup>

The idea of a contingency is primarily to offset the effect of emergencies or natural disasters. For example, One million naira was given to the Oyo State to help in the rehabilitation of the victims of the Ogunpa flood disaster in 1980.<sup>61</sup> The amount to be taken for any particular contingency is at the absolute discretion of the President. The efficacy of the legislative control is questionable because the National Assembly is not given the power to refuse to approve the supplementary estimate which will be presented to it for the purpose of replacing the amount already disbursed, though it may refuse to approve an increase.

#### **Remuneration, etc. of the President and certain other officers**

Remuneration is an amount of money that is paid to somebody for the work they have done.<sup>62</sup>

The Constitution provides that- There shall be paid to the holders of the offices mentioned in this section such remuneration, salaries and allowances as may be prescribed by the National Assembly, but not exceeding the amount as shall have been determined by the Revenue Mobilisation Allocation and Fiscal Commission.<sup>63</sup>

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<sup>59</sup> Section 83 (1)

<sup>60</sup> Section 83 (2)

<sup>61</sup> Other beneficiaries of the President's contingency spending are the Rivers State Oil Spillage (1981) Kano State for religious – (Maitasine) riots (November 1981). There other flood cases in Kogi, Benue, etc. in 2012

<sup>62</sup> Oxford Advanced Learners Dictionary International Student Edition 2010. Oxford University Press.

<sup>63</sup> Section 84 (1)

The remuneration, salaries and allowances payable to the holders of the offices so mentioned shall be a charge upon the Consolidated Revenue Fund of the Federation.<sup>64</sup>

The remuneration and salaries payable to the holders of the said offices and their conditions of service, other than allowances, shall not be altered to their disadvantage after the appointment.<sup>65</sup>

The offices aforesaid are the offices of President, Vice-President, Chief Justice of Nigeria, Justice to the Supreme Court, President of the Court of Appeal, Justice of the Court of Appeal, Chief Judge of the Federal High Court, Judge of the Federal High Court, President of the National Industrial Court, Judge of the National Industrial Court. Chief Judge and Judge of the High Court of the Federal Capital Territory, Abuja, Chief Judge of a State, Judge of the High Court of a State, Grand Kadi and kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, President and Judge of at the Customary Court of Appeal of the Federal Capital Territory, Abuja, Grand Kadi and Kadi of the Sharia Court of Appeal of a State, President and Judge of the Customary Court of Appeal of a State, the Auditor-General for the Federation and the Chairmen and members of the following executive bodies, namely, the Code to Conduct Bureau, the Federal Civil Service Commission, the Independent National Electoral Commission, the National Judicial Council, the Federal Judicial Service Commission, the Judicial Service Committee of the Federal Capital Territory, Abuja, the Federal Character Commission, the Code of Conduct Tribunal, the National Population Commission, the Revenue Mobilisation Allocation and Fiscal Commission, the Nigeria Police Council and the Police Service Commission.<sup>66</sup>

Any person who has held office as President or Vice-President shall be entitled to pension for life at a rate equivalent to the annual salary of the incumbent President or Vice-President.<sup>67</sup>

Provided that such a person was not removed from office by the process of impeachment or for breach of any provisions of this Constitution.

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<sup>64</sup> Section 84 (2)

<sup>65</sup> Section 84 (3)

<sup>66</sup> Section 84 (4)

<sup>67</sup> Section 84 (5)

Any pension granted by virtue of subsection (5) of this section shall be a charge upon the Consolidated Revenue Fund of the Federation.<sup>68</sup>

The recurrent expenditure of judicial offices in the Federation (in addition to salaries and allowances of the judicial officers mentioned in subsection (4) of this section) shall be a charge upon the Consolidated Revenue Fund of the Federation.<sup>69</sup>

This is one of the instances that the Constitution charges directly the expenditure of money from the Consolidated Revenue Fund. All money charged directly on the Fund are not subject to annual debate in the National Assembly because once fixed, they do not appear on the annual budget estimate presented in the Appropriation Bill because they are not subject to changes during the term of office of the incumbent office holder.

The office holders to which the provision applies are specifically mentioned and the list does not include members of the Legislature. Indeed, it is provided that the members of the Legislature shall be entitled to remuneration or emolument as legislator as determined by the Revenue Mobilisation and Allocation Committee. In the American Constitution, it is also specifically provided that members of Congress shall be paid,<sup>70</sup> although under the British system it is an accepted convention which has been legalised.<sup>71</sup>

It is now provided that Presidents and Vice-Presidents are paid their salaries and other emoluments for life.<sup>72</sup> Subsection (7)-charging the recurrent expenditure of judicial offices in the Federation upon the Consolidated Revenue Fund is to ensure the enhancement of the Independence of the judiciary.

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<sup>68</sup> Section 84 (6)

<sup>69</sup> Section 84 (7)

<sup>70</sup> Art 1, s. 6 provides "The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by law, and paid out of the Treasury of the United States.

<sup>71</sup> Since the National Assembly has the sole power to authorise the expenditure of public funds, there is no doubt they will be the ultimate arbiters of their own fortunes. They may be recommended and/or estimated by the Executive in the Appropriation Bill. If they fix a salary higher than that estimated by the President, then they will also pass a supplementary Appropriation Bill when it is presented.

<sup>72</sup> The Remuneration of the President Act 1965 and the Remuneration of President (Amendment) Decree 1966- National Consolidated in Revenue Mobilization and Fiscal Commission Act.

For members of the Legislature to be paid some emoluments, therefore, a member of the National Assembly who has sworn to the Oath and taken his seat is prima facie entitled to salary and other allowances, even though the House subsequently declares his seat vacant. The one who is subsequently chosen to fill the vacancy is entitled to a salary only from the time the seat was declared vacant. This trend has been reversed by judicial pronouncements. The Courts now order any legislature removed to refund his salaries and allowances.<sup>73</sup>

**Powers and Control over Public Funds at State level-** public fund will include the statutory allocation from federation account and internally generated Revenue.

#### **Establishment of Consolidated Revenue Fund**

All revenues or other monies raised or received by a State (not being revenues or other moneys payable under this Constitution or any Law of a House of Assembly into any other public fund of the State established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the State.<sup>74</sup>

No moneys shall be withdrawn from the Consolidated Revenue Fund of the State except to meet expenditure that is charged upon the Fund by this Constitution or where the issue of those moneys has been authorised by an Appropriation Law, Supplementary Appropriation Law or Law passed in pursuance of section 121 of this Constitution.<sup>75</sup>

No moneys shall be withdrawn from any public fund of the State, other than the Consolidated Revenue Fund of the State, unless the issue of those moneys has been authorised by a Law of the House of Assembly of the State.<sup>76</sup>

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<sup>73</sup> 'S-Court sacks APC lawmaker in Edo, gives him 90 days to refund salaries', available on [www.vanguardngr.com](http://www.vanguardngr.com)>2017/12 ; 'Breaking: Supreme Court sacks Taraba senator Abubakar Danladi, orders him' available on [www.vanguardngr.com](http://www.vanguardngr.com)>2017/06 ; 'Court sacks A'Ibom senator, to refund salaries, allowance' available on [punchng.com](http://punchng.com)>court-sacks-aibom-senat...

<sup>74</sup> Section 120 (1)

<sup>75</sup> Section 120 (2)

<sup>76</sup> Section 120 (3)

No moneys shall be withdrawn from the Consolidated Revenue Fund of the State or any other public fund of the State except in the manner prescribed by the House of Assembly.<sup>77</sup>

The States have their own Consolidated Revenue Fund and the withdrawals from the Fund are subject to the authorisation by an Appropriation Law, Supplementary Appropriation Law or as provided for by the Constitution. The Legislature of the State is the House of Assembly; a single Chamber House, but it performs all the functions which would normally be performed by the National Assembly for the federation.

#### **Authorisation of expenditure from Consolidated Revenue Fund**

The Governor shall cause to be prepared and laid before the House of Assembly at any time before the commencement of each financial year estimates of the revenues and expenditure of the State for the next following financial year.<sup>78</sup>

The heads of expenditure contained in the estimates, other than expenditure charged upon the Consolidated Revenue Fund of the State by this Constitution, shall be included in a bill, to be known as an Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the State of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.<sup>79</sup>

Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of the courts concerned.<sup>80</sup>

If in respect of any financial year, it is found that -

the amount appropriated by the Appropriation Law for any purpose is insufficient; or

- (a) a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Law,

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<sup>77</sup> Section 120 (4)

<sup>78</sup> Section 121 (1)

<sup>79</sup> Section 121 (2)

<sup>80</sup> Section 121 (3)

A supplementary estimate showing the sums required shall be laid before the House of Assembly and the heads of any such expenditure shall be included in a Supplementary Appropriation Bill.<sup>81</sup>

In the State, the Governor is the Chief Executive and it is his duty to present his budget to the Legislature, which is the Unicameral House of Assembly.

#### **Authorisation of Expenditure in Default of Appropriations**

If the Appropriation Bill in respect of any financial year has not been passed into Law by the beginning of the financial year, the Governor may authorise the withdrawal of moneys from the Consolidated Revenue Fund of the State for the purpose of meeting expenditure necessary to carry on the service of the government for a period not exceeding six months or until the coming into operation of the Law, whichever is the earlier;

Provided that the withdrawal in respect of any such period shall not exceed the amount authorised to be withdrawn from the Consolidated Revenue Fund of the State under the provisions of the Appropriation Law passed by the House of Assembly for the corresponding period in the immediately preceding financial year, being an amount proportionate to the total amount so authorised for the immediately preceding financial year.<sup>82</sup> This goes along the line of the federal situation already discussed earlier.

#### **Contingencies Fund**

A House of Assembly may by Law make provisions for the establishment of a Contingencies Fund for the State and for authorising the Governor, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Fund to meet that need.<sup>83</sup>

Where any advance is made in accordance with the provisions of this section, a Supplementary Estimate shall be presented and a Supplementary Appropriation Bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.<sup>84</sup>

Contingency fund of the State is to assist any part of the State that may have suffered any crisis or natural disasters. Each State in recognition of its autonomy, has the right to fix any amount as the Contingency Fund, and

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<sup>81</sup> Section 121 (4)

<sup>82</sup> Section 122

<sup>83</sup> Section 123 (1)

<sup>84</sup> Section 123 (2)

there is no reason why any State should have the same amount as another State.

### **Remuneration, etc., of the Governor and Certain other Officers**

There shall be paid to the holders of the offices mentioned in this section such remuneration and salaries as may be prescribed by a House of Assembly, but not exceeding the amount as shall have been determined by the Revenue Mobilisation Allocation and Fiscal Commission.<sup>85</sup>

The remuneration, salaries and allowances payable to the holders of the offices so mentioned shall be charged upon the Consolidated Revenue Fund of the state.<sup>86</sup>

The remuneration and salaries payable to the holders of the said offices and their conditions of service, other than allowances, shall not be altered to their disadvantage after their appointment.<sup>87</sup>

The offices aforesaid are the offices of Governor; Deputy Governor, Auditor-General for a State and the Chairman and members of the following bodies, that is to say, the State Civil Service Commission, the State Independent Electoral Commission and the State Judicial Service Commission.<sup>88</sup>

Provisions may be made by a Law of a House of Assembly for the grant of pension or gratuity to or in respect of a person who had held office as Governor or Deputy Governor and was not removed from office as a result of impeachment; and any pension granted by virtue of any provision made in pursuance of this subsection shall be a charge upon the Consolidated Revenue Fund of the State.<sup>89</sup>

Apart from the Governor and his Deputy the office holders for which the State is responsible are those officers (specifically employed) whose sole responsibilities are to the State, hence Judges of the High Court of the State, Judges of the Sharia Court of Appeal, where there are any. In this regard only the Northern States operate the Sharia Law and therefore have the Sharia Court of Appeal.<sup>90</sup> Presidents and judges of Customary Courts

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<sup>85</sup> Section 124 (1)

<sup>86</sup> Section 124 (2)

<sup>87</sup> Section 124 (3)

<sup>88</sup> Section 124 (4)

<sup>89</sup> Section 124 (5)

<sup>90</sup> See, Obilade, 'The Nigerian Legal System', (Sweet & Maxwell, 1979), p. 183n

of Appeal are more likely to be restricted to the Southern States which have a system of customary courts.<sup>91</sup> Plateau State has appointed a President of the Customary Court of Appeal so have the Oyo and Iagos States. There seems to be a general agreement on the salaries being paid to the Governors and their deputies as well as those fixed for the legislators.<sup>92</sup> The pensions of governors and their deputies are now subject of controversial because the House of Assembly of each state just rubber stamped the proposal of the executive without considering the financial capability of the States.

### **Public Revenue**

The income of the government through all sources is called public income or public revenue. According to Dalton, however, the term public income has two senses, narrow and wider. In its wider sense it includes all the income or receipts which a public authority may secure during any period of time. In its narrow sense, however, it includes only those sources of income of the public authority which are ordinarily known as revenue sources. To avoid ambiguity, this, the former is termed public receipts and the latter public revenue<sup>93</sup>.

### **Distributable Pool Account**

The Federation shall maintain account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.<sup>94</sup>

The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density:

<sup>91</sup> Ibid, p. 203

<sup>92</sup> No one knows the remuneration of Governors, Deputy Governors and the legislature today. They are kept in secret. This is against the principle of transparency which democracy stands for.

<sup>93</sup> [www.yourarticlelibrary.com](http://www.yourarticlelibrary.com)>finance accessed on 6<sup>th</sup> June 2018

<sup>94</sup> Section 162 (1)

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.<sup>95</sup>

Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.<sup>96</sup>

Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly.<sup>97</sup>

The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.<sup>98</sup>

Each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.<sup>99</sup> The National Assembly is vested with enormous power with regard to control of the Federation account(s).

Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.<sup>100</sup> Instead of State to pay to local Government from its revenue states are rather deducting huge sums of money from local Government allocation under the pretext of joint account.

The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.<sup>101</sup>

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<sup>95</sup> Section 162 (2)

<sup>96</sup> Section 162 (3)

<sup>97</sup> Section 162 (4)

<sup>98</sup> Section 162 (5)

<sup>99</sup> Section 162 (6)

<sup>100</sup> Section 162 (7)

<sup>101</sup> Section 162 (8)

Any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Council for disbursement to the heads of courts established for the Federation and the States under section 6 of this Constitution.<sup>102</sup>

For the purposes of subsection (1) of this section, revenue" means any income or return accruing to or derived by the Government of the Federation from any source and includes -

- (a) any receipt, however described, arising from the operation of any law;
- (b) any return, however described, arising from or in respect of any property held by the Government of the Federation;
- (c) any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body.<sup>103</sup> However in Nigeria, the States are fond of spurious deductions from local Government account to the detriment of the administration of local Government. So many local governments cannot pay salary of staff because of the State governors' spurious deductions. This is common to almost all the States of the federation. The National Assembly made a law to curb this menace but the Supreme Court Struck down this law as being ultra vires their enumerated powers in the Constitution.

#### **Allocation of other Revenues**

Where under an Act of the National Assembly tax or duty is imposed in respect of any of the matters specified in item D of part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly -

- (a) Where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State;
- (b) where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from

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<sup>102</sup> Section 162 (9)

<sup>103</sup> Section 162 (10)

that State.<sup>104</sup> This is to allow for equity and to encourage other States to promote ventures that will generate higher taxes.

### **Federal Grants-in-Aids of State Revenue**

The Federation may make grants to a State to supplement the revenue of that State in such sum and subject to such terms and conditions as may be prescribed by the National Assembly.<sup>105</sup> Under this section the Federal Government has granted bailout to States and remitted to States Paris Club refund but this did not pass through the National Assembly in violation of the Constitution.

The Federation may make external grants to a Foreign State or any international body in furtherance of the foreign policy objectives of Nigeria in such sum and subject to such terms and conditions as may be prescribed by the National Assembly.<sup>106</sup> Nigeria has granted aid to some African Countries with Approval of National Assembly.

Each State shall, in respect of each financial year, pay to the Federation an amount equal to such part of the expenditure incurred by the Federation during that financial year for the purpose of collection of taxes or duties which are wholly or partly payable to the State pursuant to the provisions of this Part of this Chapter or of any Act of the National Assembly as is proportionate to the share of the proceeds of those taxes or duties received by the State in respect of that financial year.<sup>107</sup> This provision allows the States to reimburse the federal government for administrative expenses incurred in collection of certain taxes on behalf of the states.

### **Set-off**

Any payment that is required by this Part of this Chapter to be made by the Federation to a State may be set-off by the Federation in or towards payment of any sum that is due from that State to the Federation in respect of any loan made by the Federation to that State.<sup>108</sup> This proviso allows the Federal Government to deduct the administrative expenses from source before remitting the balance to the States.

The right of set-off conferred by subsection (1) of this section shall be without prejudice to any other right of the Federation to obtain payment of

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<sup>104</sup> Section 163

<sup>105</sup> Section 164 (2)

<sup>106</sup> Section 164 (2)

<sup>107</sup> Section 165

<sup>108</sup> Section 166 (1)

any sum due to the Federation in respect of any loan.<sup>109</sup> This shows that a State can apply for loan from the federal government in addition to grants or bailout. It is the loan that should be repaid or set off while grants or bailout are gifts or financial assistance to states. But unfortunately the Federal government has treated the bailout given to States as loan instead of financial assistance as contemplated by the Constitution.

#### **Sums charged or Consolidated Revenue Fund**

Any payment that is required by this Part of this Chapter to be made by the Federation to a State shall be a charge upon the Consolidated Revenue Fund of the Federation and any payment that is so required to be made by a State to the Federation shall be a charge upon the Consolidated Revenue Fund of that State.<sup>110</sup>

#### **Provisions with regard to payments**

Where any payment falls to be made under this Part of this Chapter, the amount payable shall be certified by the Auditor-General for the Federation;

Provided that a provisional payment may be made before the Auditor-General has given his certificate.<sup>111</sup>

The National Assembly may prescribe the time at and manner in which any payment falling to be made under this Part of this Chapter shall be effected and provide for the making of adjustments and provisional payment.<sup>112</sup>

#### **Financial Control by Parliament in Britain**

Historically, much of Parliament's assertion of power over the Crown has been in its refusal to vote Supply (that is, money) unless grievances were redressed. This principle is expressed nowadays in the necessity for Parliament to approve the Government's proposals for expenditure and taxation. The financial procedures of Parliament are complicated; the main features of the annual financial cycle are now summarised.<sup>113</sup>

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<sup>109</sup> Section 166 (2)

<sup>110</sup> Section 167

<sup>111</sup> Section 168 (1)

<sup>112</sup> Section 168 (2)

<sup>113</sup> S. G. Richards (1978), Introduction to British Government Macmillian Press Ltd London P. 62

The following basic principles underlie public finance in Britain:

1. The House of Commons is paramount in financial matters; the House of Lords has virtually no say.
2. Only the government, not Private Members, can propose expenditure and taxation.
3. Money voted by Parliament can be used only for the purpose initially specified.
4. All taxes must be paid into, and all expenditure financed from, the Consolidated Fund, which is an account at the Bank of England.<sup>114</sup>

About 90 per cent of government expenditure comes under the heading of Supply Services, which means that it must be voted annually. The remaining parts are known as Consolidated Fund charges and are not subject to annual vote; the main items being interest on the National Debt and the salaries of High Court judges, the Speaker and a few public officials like the Parliamentary Commissioner for Administration. The reason for making these items a permanent charge is that it makes them, at least technically, beyond the undesirable political interference that could take place if they were subject to annual renewal.<sup>115</sup>

### *The Estimates*

Every autumn each government department has to submit to the Treasury its estimates of expenditure for the next financial year beginning on 1<sup>st</sup> April. Before that date the needs of the government services must be provided for until the estimates can be finally voted, usually in early August. This is done by means of Votes on Account, one for the Civil departments and one for Defence, on which Consolidated Fund Bills are passed in February and March respectively.

### *The Budget*

Usually just before or just after the beginning of the financial year on 1<sup>st</sup> April, the Chancellor of the Exchequer introduces his budget, he gives a general review of the economic situation, surveys national income and expenditure over the past year and presents his taxation proposals for the coming year. After the Chancellor's speech, the House of Commons passes the Budget Resolutions which give immediate legal authorisation for the collection of specified taxes. This is permitted by the Provisional Collection of Taxes Act 1968 but only until 5 August, by when the budget

<sup>114</sup> Ibid

<sup>115</sup> Ibid

proposals must have been given permanent effect in the Finance Act. Just before the summer adjournment the Appropriation Act is passed to lay down that the monies voted must only be spent for the purposes indicated in the Estimates.

### ***Control of expenditure***

The Public Accounts Committee was appointed for the first time in 1861 and is constituted at the beginning of each session. It consists of 15 Members, reflecting party strengths in the House, with the Senior Opposition Member as its Chairman. The main functions of the Committee are to ensure that the money voted by Parliament has been spent on the purposes prescribed and that economy has been observed in the expenditure of the various departments. The Committee is assisted by the Comptroller and Auditor General, who is an officer of Parliament appointed to audit public funds. He can be dismissed only by resolution of both Houses of Parliament and his salary, like those of High Court Judges, is a permanent charge on the Consolidated Fund. This protects him from governmental influence in carrying out his duties, which are exclusively concerned with probing into the financial efficiency and probity of governments.

### **Financial Control by the Congress in the United States of America**

The annual budgets of the United States are complex, comprising thousands of items covering nearly a thousand pages of fine print in a book of quarto size. It is a full-time occupation to become well acquainted with just a portion of the budget. No individual congressman has enough time to devote to the budget to master it. The President, on the other hand, has an organization of some 500 employees, the Office of Management and Budget, whose functions are the formulation of the budget and supervision of its operation. Their expert knowledge is unmatched in Congress. Except for important policy matters now and then, presidential spending recommendations survive intact through congressional scrutiny and enactment.<sup>116</sup>

The appropriation of money by Congress was not placed on a coordinated basis until the passage of the Budget and Accounting Act of 1921. This law set up the Bureau of the Budget and provided certain procedures designed for central control and guidance of federal expenditures.

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<sup>116</sup> Rotin Bennett Posey (1975) *American Government* Littlefield, Adams & Co. New Jersey p. 97

### **Budget Preparation**

A budget is a plan containing estimates of income and pro-posed expenditures, applicable to the ensuing fiscal year. The various agencies of the federal government submit to the Office of Management and Budget (formerly called the Bureau of the Budget) by September 15 of each year their requests for the funds they would like to be able to spend in the forth-coming fiscal year. The Office assembles and consolidates the requests. In the meantime, it has received from the Department of the Treasury careful estimates of expected revenues. The requested expenditures always exceed the funds in sight.

Under the general guidance of the President on matters of broad policy, the personnel of the Office pare down the requested expenditures. Decisions of the Office are reversible only by the President. The consolidated and revised schedules of proposed expenditures, along with revenue estimates, are forwarded by the President to Congress in January, along with his budget message.

### **Appropriations**

Proposals for new taxes go to the House committee on Ways and Means and the Senate Finance Committee. Proposed expenditures are analysed by the House and Senate appropriations committees. The appropriations committees Split up into subcommittees, to hold hearings and study sections of the budget.

Congress tried to consolidate all appropriations into one immense appropriations bill in 1950, instead of dividing the budget into 14 or 15 bills, as had been the previous practice. The result was a greater delay, so in the next year, Congress reverted to the practice of a number of bills. Even so, Congress often has difficulty in enacting appropriations by July first, when the new fiscal year begins.

The president must approve or veto an appropriation bill in its entirety, he cannot veto individual items. The taxing power of the national government is broadly stated in Section 8 of Article I of the Constitution;

The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States...Upon the provision there are two restrictions of note: (1) duties, imposts, and excises must be uniform, and (2) direct taxes must be proportioned among the states according to

population. The second proviso does not apply to income taxes, which are exempted from it by the Sixteenth Amendment.

The spending power of the national government is derived from the constitutional clause quoted above. Obviously the government may spend by paying its debts, by providing for the defense of the country and most significant of all because of its breadth by providing for the general welfare. There are three constitutional restrictions upon the spending power:

- 1) no money may be spent except upon appropriation made by Congress,
- 2) a statement of receipts and expenditures must be published from time to time, and
- 3) appropriations for the Army may not extend for a longer period than two years.

The borrowing power of the national government is set forth in the same clause of the Constitution quoted above. Congress may "borrow money on the credit of the United States." There is no constitutional restriction of any kind upon the borrowing power. Purpose of borrowing, amount to be borrowed, interest rate to be paid, term of bonds, total size of the national debt: all these are up to Congress itself to determine, or to let the Treasury Department determine.<sup>117</sup>

#### **Fixing the Remuneration of Public Office Holders in Nigeria**

The duty to fix remuneration of civil servants or public servants in Nigeria is vested by law in the National Salaries, Incomes and Wages Commission of Nigeria<sup>118</sup> while the duty to fix remuneration for public office holders like president, Vice President,<sup>119</sup> Governors and deputy Governors<sup>120</sup>, National Assembly members<sup>121</sup> and States Houses of Assembly members<sup>122</sup> and other political appointees is vested in the Revenue

<sup>117</sup> Rollin Bennet Posey (1975), American Government, Library of Congress Cataloging in Publication Data, Printed in the United State of America, p. 189

<sup>118</sup> Section 3(3) of Salaries Incomes and Wages Commission Act Cap N 72 Laws of the Federation 2004

<sup>119</sup> Section 84

<sup>120</sup> Section 124

<sup>121</sup> Section 70

<sup>122</sup> Section 111

mobilisation Allocation and Fiscal Commission subject to the approval of the National Assembly.

For president and his Vice President and their appointees, the Revenue mobilization, Allocation and Fiscal Commission is vested with the power to fix their remuneration but subject to the approval of the National Assembly,<sup>123</sup> while for the Governors his deputy and other appointees, the National Revenue mobilisation Allocation and fiscal commission is vested with power to fix the remuneration subject to the approval of the National Assembly.<sup>124</sup>

As for the National Assembly members (Senate and House of Representatives) the body charged with the responsibility of fixing their remuneration is the Revenue mobilization, Allocation and Fiscal Communication (RMAFC).<sup>125</sup> It is this same body that has the responsibility to fix the remuneration of the members of the States Houses of Assembly.<sup>126</sup> RMAFC is expressly given the mandate under section 6<sup>127</sup> of RMAFC Act in addition to the sections 70, 84, 111 and 124 of the Constitution.

The big question that follows is that where does the National Assembly derive the power to allocate to its members running cost running into N13.5m per month? The payment of N13.5m to members of the National Assembly by the National Assembly is a violation of the constitution of the Federal Republic of Nigeria which they all swore to uphold. Any law made by the Assembly granted itself the power to take the money is null and void and any money collected so far should be refunded to National treasury.

#### **Who can challenge this illegality?**

Any citizen of Nigeria, or the Civil Society Organisation or the Revenue Mobilization, Allocation and Fiscal Commission can challenge the National Assembly on this illegality. The Nigeria Bar Association and the Nigerian Labour Congress can also challenge this illegality on behalf of Nigerians. Nigerian law makers should not be law breakers. The Revenue Mobilization, Allocation and Fiscal Commission should make public what

<sup>123</sup> Section 84

<sup>124</sup> Section 111

<sup>125</sup> Section 70

<sup>126</sup> Section 124

<sup>127</sup> Section 6 of Revenue Mobilisation, Allocation and Fiscal Commission Act Cap R

it approved as remuneration for the members of the National Assembly so that that can be enforced on them by law in order to save the nation from wastage and frugality that is presently happening with regard to the remuneration of the members of the National Assembly. The National Assembly has no power to fix its remuneration nor to add to any remuneration approved for it by the RMAFC.

### **Conclusion**

We have shown in this paper that the National Assembly has enumerated powers in the Constitution of Nigeria. Even though the powers seem to be wide, it is still not absolute or arbitrary. Therefore, the National Assembly should restrict itself to its enumerated powers in the constitution. But the National Assembly should wake up to its responsibility by not allowing the executive to perform its function through National Economic Council or any other executive body.

The National Assembly should also be cautious not to commit illegality by voting money to itself without recourse to law, fixing its own remuneration, contrary to Revenue mobilization Allocation Fiscal Commission Act, and clear provisions of the Constitution. It should also be cautious to avoid padding of budget and illegal constituency projects that are used to siphon money from the National treasury. There should be cooperation and collaboration between the legislative and the executive so as to guarantee good governance, but this does not mean any organ of government should be indolent or abdicate its constitutional responsibility on the altar of harmonious relationship with each other.

All account of the federal government should be approved and made subject to control of the National Assembly in accordance with the provisions of the Constitution. Excess Crude Account and any other account must be opened with the approval of the National Assembly and any withdrawal therefrom must be with the approval of the National Assembly and not any executive body.

The Paris Club refund and the recovered Abacha loot and any other money recovered by the Economic and Financial Crime Commission ought to go back to the Federation account for sharing to the federal, States and local governments. These moneys do not belong to the federal government but to the Federation which consists of the Federal, States and Local governments.

Whatever law made by the National Assembly in respect of this remuneration should be challenged in the Court of Law to test its legality and if found to be illegal, the court should set it aside because, with the dwindling oil revenue the remuneration is not sustainable.

The National Assembly, the British Parliament and the American Congress have wide powers over control of public funds. This is deliberately made to be so in the laws and conventions so as to ensure proper checks of the executive by the legislature and also to ensure transparency and probity in governance. The American congress and the British parliament seem to have more power on the executive than the National Assembly, because of British parliamentary supremacy while in America because of the provision of her constitution. But by and large, the three legislatures have far reaching powers to control public spending by the executives.