PARLIAMENT AND THE POWER OF THE PURSE:
THE NIGERIAN CONSTITUTION OF 1999 IN COMPARATIVE PERSPECTIVE

JOACHIM WEHNER*

With Nigeria’s transition from military rule to democratically elected government in May 1999, a new constitution took effect. The Constitution of the Federal Republic of Nigeria, 1999, establishes a framework for democratic governance on the basis of a presidential system of government, with a two-chamber National Assembly, and organizes Nigeria as a federal republic. Soon after the new constitutional framework came into effect, it was thrown into the spotlight during a dispute between the president and the National Assembly that caused a four-month delay in the passing of the federal budget for the 2000 fiscal year.

The conflict revealed that the executive and legislative branches of government were actively engaging with, and testing, their respective powers and roles in budgetary matters under the new constitution. As President Olusegun Obasanjo remarked: “It was perhaps to be expected that at the beginning of our search for the meaning and form of a true republican democracy, mistakes would be made, and extreme positions would be taken by those involved in this search”.

The National Assembly, on the other hand, has insisted that its input is desirable to match the budget more closely with developmental needs. Moreover, the National Assembly claimed that the executive implemented a mere 30 per cent of the 2000 budget, a figure the federal government put at 64 per cent. Despite hopes that the executive and legislative branches would be able to restore a cordial relationship, the budget process continues to attract controversy.

The active engagement of the Nigerian Parliament with the budget is rather unusual compared with other countries on the continent. Many African parliaments to date have done little more than to rubberstamp the executive’s expenditure and taxation proposals. But there are signs that this situation is changing. A number of African parliaments are currently reviewing their role in the budgetary process, and are beginning to argue for more proactive involvement.

* Budget Information Service, Institute for Democracy in South Africa (Idasa), Cape Town. This article draws on a paper presented at a workshop on “Budget and Fiscal Democracy in Nigeria”, held in Abuja, 15–19 October 2001, and organized by the Centre for Public–Private Cooperation (CPPC). I wish to thank the following individuals for their input: Prof. A. Ariyo, Director, CPPC, Ibadan; Prof. C. Murray, Department of Public Law, University of Cape Town; the Hon. Justice E.O. Ayoola, Supreme Court of Nigeria; and H.O. Olutoye, Committee Clerk, Committee on Appropriation, House of Representatives. However, unless otherwise indicated, this article should not be construed as representing the views of anyone except the author. Any factual mistakes or misinterpretation are the sole responsibility of the author.


4 For the purpose of this analysis, the words parliament and legislature are used synonymously. The same applies to the terms government and executive, unless otherwise specified.
The creation of a Committee on Estimates in the Zambian legislature in 2000, and more recently of a Budget Committee in the Ugandan Parliament, are examples that illustrate this development. Similarly, the South African Parliament is currently reviewing its role in the budgetary process on the basis of the country’s constitution. In the context of a rising tide of legislative activism on the continent, it is important to seek clarity on the fundamental legal provisions that guide the budgetary process.

This article clarifies and assesses the legal powers of the Nigerian Parliament with regard to the budget in a comparative context. Given that the Nigerian Constitution is currently under review, an additional aim of this analysis is to identify possible weaknesses that might be addressed as part of a redrafting or amendment process. The following sections ask why money matters in constitutions, provide a comparative overview of constitutional provisions with regard to legislative–executive relations in the context of the budgetary process, apply this framework to the Nigerian case, and offer some concluding observations based on this analysis.

Two caveats are in order. While constitutional provisions on budgetary matters are usually broader than the aspect of legislative–executive relations, including, for example, intergovernmental fiscal relations, the following discussion is limited to the former aspect. Furthermore, while the legitimacy of the latest Nigerian Constitution has been questioned by some, for the purpose of this analysis, I take the current provisions as given.

**Fiscal Constitutions: What They Are and Why They Matter**

Constitutions normally contain provisions that frame the government’s activities of raising revenues and spending money. There are several reasons why money “matters” in constitutions. First, where government is territorially decentralized, for instance in federal states or in unitary states with elements of decentralization, constitutions need to provide guidance with regard to the assignment of functions to different levels of government, and the way in which these are to be financed. The vertical division of state functions has important financial implications, which need to be clarified.

Secondly, constitutions define the separation of powers between the executive, legislative and judicial branches of government. An important element defining

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5 Section 77(2) of the Constitution of the Republic of South Africa, 1996, grants parliament the right to amend the budget, but simultaneously calls for national legislation to regulate the process by which this is done. At the time of writing, this piece of enabling legislation had not yet been tabled, although this was expected to occur in the near future. The contents of the legislation have been subject to negotiation between the National Treasury and the Portfolio Committee on Finance in the National Assembly, amongst others, since 1997. Refer to W. Krafchik & J. Wehner, “The role of parliament in the budgetary process”, (1998) 66 South African Journal of Economics 512–541.

6 The document had been drafted under the auspices of the outgoing military ruler, General Abdulsalam Abubakar. The process was widely regarded as lacking transparency. See Citizens’ Forum for Constitutional Reform, The Position of the Citizens’ Forum for Constitutional Reform (CFPCR) on the Review of the 1999 Constitution of the Federal Republic of Nigeria, Abuja, 2001. The outcome is a constitution that many Nigerians consider legal but illegitimate, although some critics have challenged even the former assumption. Refer to T.I. Ogowewo, “Why the judicial annulment of the Constitution of 1999 is imperative for the survival of Nigeria’s democracy”, (2000) 44 JAL 133–166. Review initiatives are currently under way, which may result in further constitutional changes in the near future.

the horizontal balance of power between the legislature and the executive is “the power of the purse”, the determination of who is responsible for raising and allocating the resources of the state, or how this power is shared between these two branches of government.

Thirdly, constitutions also have what could be termed a “public relations function”. For instance, sound financial management and fiscal transparency have become prominent themes in the global debate on and campaign for good governance. More recent constitutions tend to reflect the development of this debate through the inclusion of more extensive provisions on fiscal transparency and public financial management.

Finally, there is a historical reason why constitutions are increasingly including provisions on financial matters, that is the growing complexity of modern government. Constitutions that date back many decades, or even centuries, tend not to contain much detail on the budgetary process. For example, with regard to budgetary matters, the Constitution of the United States of America, 1787, establishes little more than the general empowerment of Congress to raise revenue, allocate expenditures and borrow money. Before the rise of the welfare state, the key function of government was to ensure the territorial integrity of the state. As economies modernized the activities of the state expanded, and public demands and expectations grew. Budgets became increasingly important and complex instruments of modern governance. Most “younger” constitutions recognize this centrally and incorporate more or less elaborate provisions on the budgetary process. For this reason, among others, processes of constitutional change and modernization can lead to increasing detail on financial matters.

Those parts of a constitution that lay this budgetary foundation can be called the “fiscal constitution”. A number of constitutions contain finance chapters for this purpose, but this need not be the case. Even when a finance chapter is provided, other parts of a constitution may also contain clauses with relevance to the budgetary process, such as the Bill of Rights. The fiscal constitution does

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8 The author is indebted to Prof. C. Murray, Department of Public Law, University of Cape Town, for this point.
10 A good example is the Constitution of the Republic of South Africa, 1996. For instance, s. 215(1) demands that “national, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector”. Such language resonates with the current emphasis on “good governance”.
11 Art. I s.8(1) and (2) of the Constitution of the United States of America, 1787, gives Congress the power “To lay and collect Taxes, Duties, Imposts and Excesses, to pay the Debts and provide for the common Defence and general Welfare of the United States” and “To borrow Money on the credit of the United States”.
12 In medieval England, for instance, the Crown’s need for resources to conduct war efforts gave rise to the development of national taxation, which shaped the role of parliament in raising revenues from the public and the emergence of constitutional principles related thereto. See G.L. Harris, King, Parliament, and Public Finance in Medieval England to 1369, Oxford, 1975.
13 For instance, chapter 13 of the Constitution of the Republic of South Africa, 1996, covers a broad range of financial matters. These include the national revenue fund, revenue sharing, budget formats, treasury control, procurement, government guarantees, the remuneration of public office holders, the establishment and functions of an independent Financial and Fiscal Commission, the central bank, as well as local and provincial financial matters.
14 The word “fiscal” stands for “in relation to government money or public money”.
15 A recent example of how the latter can force repriorization in government expenditures is provided by the October 2000 judgement by the Constitutional Court in South Africa on the so-called “Groothoom case” (Case CCT 11/00). Irene Groothoom was a squatter in Western Cape province who went to court to insist upon her right to housing based on s. 26 of the Constitution of the Republic of South Africa, 1996. When the case came before the Constitutional Court, it decided
not have to be contained in a written document. Notably, the traditionally adhered-to and fundamental conventions of the British budgetary process have as compelling a status as similar provisions in the written constitutions of other countries, and some are considered principles of constitutional importance. I define the fiscal constitution as the most fundamental set of legal rules or deeply entrenched conventions of a state that frame the governmental activities of obtaining revenues and allocating expenditures.

The fiscal constitution is an important resource for all those concerned with public finance and government budgeting. It may not be the most detailed set of budgetary rules, but it is certainly the most fundamental. (In most cases the constitution is the supreme law of the country.) Normally, acts of parliament and ministerial regulations spell out much of the detail of public financial management. But all such acts and regulations will have to be congruent with the constitution. For government officials involved in the budgetary process, non-compliance with constitutional provisions would be a most severe violation, and a sign that existing budgetary systems and structures are not adequate to ensure adherence to the most fundamental standards. Furthermore, civil society can use the fiscal constitution as a “checklist” against which the government can be held to account.

**Comparative Observations**

In the modern budgetary process in the public sector can be divided into four distinct phases: drafting, legislating, implementing, and auditing. As the following discussion demonstrates, constitutions assign responsibility for these tasks, provide a basic timeframe within which they are to be executed, and establish some key standards and procedures that will have to be adhered to during this process. This section sketches key constitutional traditions and parameters that apply to legislative–executive relations throughout the budgetary process from a comparative perspective, with the aim of establishing a framework for the discussion of the Nigerian case. Particular reference is made to constitutional provisions on the African continent, but other constitutions are included in the debate when they were historically influential in the development of Africa’s fiscal constitutions.

**Drafting the budget**

Most constitutions explicitly assign the duty to prepare a draft budget to the executive. In the Westminster system, which has had substantial influence in anglophone Africa, the drafting power of the government reflects the tradition that the budget proposal represents the demands for subsidies made by the Crown. This “financial initiative of the Crown” has been described as “a

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principle of the highest constitutional importance”. In the British Parliament, this principle was codified in a 1713 Standing Order, but its procedural significance predates this formal codification. It is safe to say that nowadays the right of the executive to present a draft budget is near universal, be it based on express constitutional provisions or actual practice.

One notable exception is the United States Congress, which has the constitutional power to tax, spend and borrow (see above). The role of the President in drafting a budget is not constitutionally enshrined. Indeed, until 1921, these provisions were taken literally so that Congress took it upon itself to prepare a draft budget through a decentralized committee process. In that year, in recognition of the increasing technical complexity of the budgetary process, it ceded to the President the power to co-ordinate the estimates supplied by government departments and submit these to the legislature in a single document. Nevertheless, even in today’s practice, the presidential draft budget serves only as a proposal in the strictest sense, and Congress shapes the budget arguably more than any other legislature.

In Africa, a number of constitutions assign the drafting duty explicitly to the executive, in one form or another. For instance, this function is assigned to the finance minister in Kenya, Madagascar, Zambia and Zimbabwe. The head of government or president is given this duty in Ghana and Uganda, while other constitutions assign it to the cabinet collectively, such as those of Malawi, Mozambique and Namibia.

Timing of the budget

Westminster-type systems tend to condone the late tabling of the budget. Other constitutional traditions support the passage of the budget prior to the beginning of the financial year, implying that it should be tabled sufficiently in advance of the fiscal year to which it relates in order to allow parliament to fulfil its obligations.

Historically, the British Parliament devised the tactic of voting appropriations near the end of the session as a means of forcing the Crown to utilize its own resources before relying on tax revenue raised from the public. In a modern context, this century-old tradition weakens parliament through complicating an approval process that should aim at advance scrutiny. Some have rationalized

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18 May, op. cit., 737.
19 Now No. 48.
20 See Inter-Parliamentary Union, above, 1052.
23 S. 103(1) of the Constitution of Zimbabwe, 1979, revised version dated 1996.
30 Art. 40(c) of the Constitution of the Republic of Namibia, 1990.
the late tabling of the budget by venturing that “the impracticality of framing Estimates too long in advance” makes it impossible to pass the budget in time for the beginning of a financial year.33 This is a poor argument, given that many countries have little difficulty in ensuring timely passage under normal circumstances.

In addition, parliament should have sufficient time to engage with the draft budget, to facilitate meaningful analysis and scrutiny. Constitutions can establish a minimum amount of time parliament must have for its consideration of the budget, for example two-and-a-half months in the Republic of the Congo,34 and at least 60 days in Madagascar.35 But many constitutions, if not most, omit explicit minimum or maximum requirements for the duration of the budgetary process in parliament. However, in practice, a meaningful parliamentary budget process would seem to require a minimum of two to three months.36

Interim measures

What happens if the budget is not passed by the beginning of the financial year? This should be avoided in order to maintain the budget’s function as a comprehensive annual plan of governmental activities. Constitutional practice falls into two broad categories. There are those countries where interim financial management is condoned, and those where this is not the case. Historically, the most well-known example of the latter is the United States, where unless Congress explicitly provides for spending there are no constitutional provisions for interim measures. As a result “shutdowns” occur when the federal government is forced to discontinue its services due to congressional failure to approve the budget, or interim spending, in time for the beginning of the financial year, as occurred for instance during the winter of 1995/1996. Elsewhere, a few constitutions prescribe the exact date by which the budget must have been passed by parliament.37

However, most constitutions provide some guidance for cases of delay. As outlined above, the Westminster tradition treats the late passage of the budget as the rule rather than an abnormal occurrence. As a result, such constitutions have to provide for interim management pending the approval of the budget. This normally is to be along the lines of the previous budget and for a limited period, usually for a maximum of three38 or four39 months, or up to a certain amount of the draft budget.40 This practice in Westminster-type systems is based on “votes on account”, an interim authorization by parliament.

Elsewhere, there are stricter rules in cases of delayed approval, beyond the beginning of the financial year. Following the French legal tradition, which is influential in francophone Africa, one variant of this option is that the executive’s

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33 May, op. cit., 749.
36 Krafchik & Wehner, op. cit., 522.
37 Art. 118 of the Constitution of the Republic of the Congo, 1992, stipulates that the budget has to be tabled by 15 October, and passed by 31 December. The latter is in time for the beginning of the fiscal year, which coincides with the calendar year.
40 For instance, s. 101 of the Constitution of the Republic of Kenya, 1992, limits the supply of funds on the basis of a parliamentary “vote on account” to a maximum of half of the requested budget.
draft budget can be implemented by ordinance if not passed by the beginning of the fiscal year, for instance in Madagascar. Thus, constitutions can establish various "reversionary points" in cases of delayed approval, notably the previous year’s budget or the government’s draft proposal.

Amending the budget

The general observation is that governments have supremacy over drafting a budget, which precludes the formal intervention of other political actors at this stage. The issue that arises is to what extent the constitution circumscribes the ability of parliament to shape the draft budget once it has been tabled. The rights of parliament to amend the budget indicate the extent to which fiscal power is constitutionally fragmented along a horizontal dimension, and thus has a decisive influence on the overall balance of powers between the legislature and the executive. The less these amendment powers are circumscribed, the less control over the budgetary outcome is left to the executive alone. Unfettered powers of amendment in budgetary matters, unlike limited powers, would, in theory, allow for the total revision of the executive’s draft budget.

Different legal traditions have a decisive impact on the nature of amendment powers. A first distinction is that historically in parliamentary systems of government, legislative powers of amendment are more likely to be circumscribed than in presidential systems. The underlying variable is the separation of powers established by pure presidential systems. The classic example is the Constitution of the United States of America, 1787, mentioned above. It establishes no legal limits on parliament’s budgetary powers, although Congress has set self-imposed limits from time to time.

To the contrary, in the Westminster tradition of parliamentary government, “reductions only” restrictions apply, where parliament may only reduce existing items, but may not include new ones or increase existing ones. This configuration evolved during the early days of the House of Commons, when it met to consider demands for subsidies made by the Crown. Its task was to decide whether and to what extent it would comply with the demand and, if so, within what limits and by what means.
An additional qualification is necessary. Under the Westminster system, the executive inherited the extensive and wide-ranging powers of the monarch. One spill-over result of this historical circumstance is that attempts by parliament to amend the budget proposal of the executive, if successful, are considered tantamount to a vote of no confidence in the government. In a number of democracies inspired by the Westminster system the executive would be challenged to resign if any changes to its budget proposal were approved.47

A different emphasis gained prominence with the constitutional changes brought about by the Fifth Republic in France. These constrain parliament’s budgetary powers so as to promote the maintenance of the deficit, or the “budget balance” between revenues and expenditures suggested by the executive.48 These limits came in response to “the independent, some would say irresponsible, exercise of financial power by the National Assembly during the prewar Third Republic”.49

In many anglophone African countries, the “reductions only” configuration of amendment powers prevalent in the Westminster system is applied either by the constitution, such as in Ghana50 and Kenya,51 or in practice, for instance in Zambia.52 In francophone countries, the configuration of amendment powers is biased towards variants of the “balanced budget” provision that aim to prevent an increase in the budget deficit. Examples are Cameroon,53 the Republic of the Congo54 and Madagascar.55 For instance, the Constitution of the Republic of Madagascar, 1992, stipulates:56 “Any amendment to the appropriations bill which entails an increase in spending or a decrease in public resources must be accompanied by a bill to increase revenue or an equivalent savings.”

There is thus no one dominant configuration of budget amendment powers. However, it is possible to identify different traditions. The first is that of unrestricted amendment powers, where parliament is unfettered in its engagement

48 Art. 40 of the Constitution of the Republic of France, 1958: “Bills and amendments introduced by Members of Parliament shall not be admissible where their adoption would have as a consequence either a diminution of public resources or the creation or increase of an item of public expenditure.”
49 Schick, op. cit., 15.
52 The Zambian Parliament, through its newly convened Committee on Estimates, has recently increased its pressure in favour of reviewing and modernizing this inherited convention. The following recommendations is worth quoting at length: “The power of Parliament to amend the Budget is currently limited to reducing existing items. Several departments indicate that parliamentary debate remains inconsequential, partially because Parliament is unable to shift funds between heads of expenditure. The Constitution does not stipulate any specific limitations on the power of Parliament to amend the Budget. A review of the current ‘reductions only’ rule is advisable, since this peculiar constellation of budgetary amendment powers originated under the Westminster system in a specific historical context that has no relation whatsoever with the context prevalent in the Republic of Zambia. Parliament should have the power to amend the Budget in any reasonable way, as long as the deficit is not increased. This would allow Parliament to undertake shifts between votes, while maintaining fiscal discipline. The Head of State would still have access to his veto possibility to request Parliament to reconsider its amendment initiatives.” Republic of Zambia, *Report of the Committee on Estimates for the Fourth Session of the Eighth National Assembly Appointed on 1st March 2000 on the Budget System in Zambia*, Lusaka, November 2000, 118.
53 Art. 18(3)(a) of the Constitution of the Republic of Cameroon, 1972, as amended by Law No. 6 of 1996.
56 Ibid.
with the budget. The second is that of balanced budget amendment powers where changes are possible within a constraint that disallows an increase of the deficit. Finally, there is a set of countries with otherwise restricted amendment powers, notably the “reductions only” configuration that evolved in the Westminster system. The minimum common denominator across these traditions is the power to reduce existing expenditure items. More restrictive provisions are rare exceptions.

**Legislative authorization of the budget**

So far, I have made no distinction between the budget, appropriation bills and tax bills. Strictly speaking, this is incorrect. Parliaments appropriated money before the use of budgets became common practice. It is nowadays well established that either a unified budget act, or separate appropriation and tax or finance acts are needed to give effect to the government’s revenue and expenditure plans on a regular, generally annual basis.

The principle of legislative authorization has also been called “the ‘Rule of Law’ in finance”. It implies that revenue and expenditure measures do not acquire validity until authorized by parliament in the form of legislation. At Westminster, the mechanism of granting money to the Crown on the basis of a bill emerged in the 14th century, when it replaced the simple vote of both the House of Commons and the House of Lords. In the late 18th century, appropriations became increasingly more detailed and comprehensive. This development was later supported with the creation of one single Consolidated Fund, which “broke the disorder caused by assigning particular taxes to special purposes” and “provided the means of infinite expenditure control through comprehensive appropriation schedules”.

The comprehensiveness of legislative control with regard to expenditures was complemented on the revenue side in the late 19th century with the consolidation of proposed changes in a composite bill known as the Finance Bill. Before 1860, individual tax measures were usually introduced in separate bills. In that year, however, the rejection by the House of Lords of the Paper Duties Repeal Bill gave birth to an omnibus bill for taxation measures. This was a cleverly designed tool for the House of Commons to control the whims of the upper house, as “although the Commons still acknowledged the right of the Lords to reject such a bill, its composite nature rendered the exercise of that right a practical impossibility.”

The continuing battle between the two houses of the British Parliament gave birth to yet another important constitutional notion, that of “money bills”. When the Lords rejected the entire Finance Bill in 1909, this prompted the passing of the 1911 Parliament Act, the purpose of which was to debar the Lords from

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57 Krafchik & Wehner, op. cit., 520.
58 One example is s. 57(1) of the Constitution of the Republic of Malawi, which prohibits the National Assembly to deal with or amend the budget unless recommended by the minister responsible for financial matters.
59 Schick, op. cit., 4–8.
61 Reid, op. cit., 57.
62 May, op. cit., 805.
rejecting money bills.\textsuperscript{63} The special constitutional recognition given to such bills was adopted in most countries influenced by the Westminster system.\textsuperscript{64} It is less common elsewhere.

Implementation

What happens when budgeted amounts have to be realigned or otherwise changed during implementation? There should be procedures to engage with parliament in instances of additional or access expenditures, to maintain meaningful parliamentary oversight. Most constitutions require supplementary estimates to capture and approve any such changes. In Africa, examples are Egypt,\textsuperscript{65} Malawi,\textsuperscript{66} Seychelles\textsuperscript{67} and Uganda.\textsuperscript{68} In practice the use of supplementary estimates should be minimized in order to preserve the integrity and comprehensiveness of the budget. The extent to which supplementary estimates are used is an indicator of the accuracy and reliability of the budget system. The greater the number of supplementary estimates used, and the greater the sums involved, the less reliable is the overall system. Of course, exceptional circumstances, such as wars or natural disasters, may warrant additional expenditure. But if excessive use is the norm, this points towards deficiencies in the budget system.

In Africa, there are constitutions that may be interpreted as incorporating “perverse incentives”\textsuperscript{69} in the sense that they contain provisions that can be used to sanction irregularities and poor financial management. In Zimbabwe, for instance, the finance minister can table a bill simply providing for the “condonation” of unauthorized (excess or additional) expenditures, which would remove any grounds for legal proceedings in such instances.\textsuperscript{69} Similarly, the Zambian Constitution allows for unauthorized expenditures to be approved in retrospect with an Excess Expenditure Appropriation Act for up to 30 months after the end of a fiscal year.\textsuperscript{70}

The audit stage and parliamentary oversight

How can parliament ensure that its voted expenditure plans and revenue measures are fully implemented? The audit of government accounts has traditionally been one of a body distinct from the legislature, but nevertheless in support of the latter’s oversight function. In Britain, the earliest reference to the Auditor of the Exchequer dates back to 1314. As a key instrument of the

\textsuperscript{63} “Section 1(2) of the Act defines a ‘money bill’ as a public bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund or the National Loans Fund, or on money provided by Parliament or the variation or repeal of any such charges; Supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising of guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them.” Ibid., 806.

\textsuperscript{64} Refer, for instance, to s. 77(1) of the Constitution of the Republic of South Africa, 1996.

\textsuperscript{65} Art. 116 the Constitution of the Arab Republic of Egypt, 1972.


\textsuperscript{67} Art. 154(6) and (7) of the Constitution of the Republic of Seychelles, 1993.

\textsuperscript{68} Art. 156(2) and (3) of the Constitution of the Republic of Uganda, 1995.

\textsuperscript{69} S. 103(5) of the Constitution of Zimbabwe, 1979, revised version dated 1996.

\textsuperscript{70} Art. 117(5) of the Constitution of Zambia, 1991, as amended by Act No. 18 of 1996.
Gladstonian reforms, the Exchequer and Audit Departments Act, 1866, required all departments, for the first time, to produce annual “appropriation accounts”, to be investigated by the Comptroller and Auditor General. The Committee of Public Accounts, which Gladstone established in 1861, considered the results of these audits. In France, the audit function dates back to the 14th century. However, it was not until Napoleon I created the Cour des Comptes (Court of Audit) in 1807 that the audit process was regularized and fully entrenched.

The Anglo-Saxon and French traditions are distinct in one important aspect. The “office model” is based on an auditor-general who reports to the legislature, which in turn is tasked with scrutinizing this report and taking appropriate action. The “court model” involves an audit or fiscal court. Under this model, auditors have the status of law court judges, which results in security of tenure and aims to ensure institutional independence. These traditions have been influential on the African continent. For instance, the “office model” prevails in many anglophone countries, such as South Africa. The “court model” involving an audit or fiscal court is favoured in the constitutions of francophone and lusophone Africa, such as those of Mali and Angola respectively.

In many African countries where the “office model” prevails, the president is entrusted with the appointment of the auditor-general, for instance in Kenya. In some cases, this is linked to a requirement for parliament to endorse the appointment, such as in Zambia. Usually, this is coupled with some mechanism to protect the office holder from premature removal on politically expedient grounds. Some constitutions prescribe that parliament needs to consent to any premature removal from office, or vest the authority to make such a decision with a judicial committee. A number of constitutions explicitly specify the exclusive grounds upon which the auditor-general may be removed. These are usually limited to incapacity or misconduct, for example in the constitutions of Kenya, Malawi and Namibia.

The audit report should be produced as speedily as possible to ensure its relevance. An example of a relatively tight deadline is the requirement in Ghana for submission within six months after the end of a fiscal year. Some constitutions do not contain any deadlines, such as those of Malawi and Zimbabwe. While it might be argued that this could be viewed as realistic, it is unlikely to be helpful. Long delays in the submission of the audit report risk that officials who are

71 W.E. Gladstone was Chancellor of the Exchequer from 1859 to 1866.
72 With the National Audit Act, 1983, the Comptroller and Auditor General formally became an Officer of the House of Commons, with discretionary power to report on the economy, efficiency and effectiveness of public spending.
73 Ss. 188 and 189 of the Constitution of the Republic of South Africa, 1996.
74 Art. 83 of the Constitution of the Republic of Mali, 1992, provides that the Supreme Court shall consist of a judicial, administrative and an accounting section.
75 Art. 123(3) of the Constitution of the Republic of Angola, 1992, allows for the establishment of an Audit Court.
78 In Namibia, the National Assembly has to approve such a move with a two-thirds majority of all its members. Refer to art. 127(4) of the Constitution of the Republic of Namibia, 1990.
79 In Ghana, the Chief Justice appoints a committee to review such a case, and recommends binding actions to the president. Refer to art. 187(13) of the Constitution of the Republic of Ghana, 1992.
responsible for a loss of public money have moved on or retired by the time the relevant incident receives attention. The interest of the public is also likely to focus on more current matters. This may make it more difficult to pursue disciplinary measures.

If public money was lost, it is not only necessary to detect such instances. It also should be ensured that the actions of any responsible officials have consequences. Few constitutions enshrine concrete mechanisms to recover any lost funds, but there are some examples of constitutional provisions that might help parliament or related agencies to pursue such cases. In Ghana the auditor-general may disallow any unauthorized item of expenditure and penalize ("surcharge") any responsible person for an appropriate amount.84 The Constitution of the Republic of Uganda, 1995, stipulates:85 "Any person holding a political or public office who directs or concurs in the use of public funds contrary to existing instructions shall be accountable for any loss arising from that use and shall be required to make good the loss even if he or she has ceased to hold that office." It also obliges parliament to “monitor all expenditure of public funds.”86 But it may not always be realistic that particular individuals will be in a position to make good the amount of money lost, depending on the magnitude of sums involved. Nevertheless, such “punitive incentives” are potentially powerful legal tools that can be applied.

**Legislative-Executive Relations in the Nigerian Fiscal Constitution**

What can these comparative observations tell us about the constitutional nature of legislative-executive relations over the budget in Nigeria? The Nigerian Constitution charges the President with tabling a draft budget before the financial year to which it applies.87 This is in line with predominant constitutional practice on the continent and elsewhere, whereby the authority to propose a draft budget to the legislature is vested in the government.

The Constitution does not prescribe exactly when the budget has to be tabled. The National Assembly has requested that the President submit the draft budget at least four months before the beginning of a new financial year so as to ensure timely passage.88 The recent Phillips Report,89 submitted by a committee appointed by the Federal Ministry of Finance to investigate the budget system, came to a similar conclusion. It recommended that the federal budget be tabled in the legislature by at least 30 September, three months ahead of the fiscal year.90 This suggests that the Nigerian system may move away from the Westminster tradition according to which the late passage of the budget is the norm rather than an exception. Clear constitutional timeframes for the tabling of the budget in the legislature may have averted much of the recent controversy. Based on comparative international experience, two to three months can be

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88 Babalobi, op. cit.
89 The report is commonly named after its Chairman, Prof. D. Phillips.
regarded as a minimum time requirement for a meaningful parliamentary budget process.

The Constitution further prescribes that, should the budget not be passed before the beginning of the financial year, the President may authorize expenditure along the lines of the previous budget for the corresponding period, but for no longer than six months. The use of such interim measures is only possible to the extent that the share of the previous budget for the corresponding period is not exceeded.91 This maximum period is slightly longer than the three to four months commonly permitted under “vote on account” procedures used in much of anglophone Africa. At the same time the provision does reflect one prominent option according to international practice, whereby the previously approved budget constitutes the frame of reference, or “reversionary point”, for interim spending.

The legislative process is constitutionally regulated. All legislation needs to be approved by both houses of parliament and signed by the President before becoming law.92 Where the President withholds assent, a bill becomes law without assent when passed by each house with a two-thirds majority. However, some special provisions apply to money bills. Should the two houses not have agreed to one version of a money bill after two months from the commencement of a financial year, the joint finance committee has to attempt to resolve any differences.93 Should the committee fail, the bill is presented to a joint sitting of both houses, and presented to the President for assent if passed.94 Should the President refuse assent within the following 30 days, a joint sitting of parliament can approve the bill with a two-thirds majority.95

These provisions suggest that the Nigerian legislature is constitutionally unconstrained in the scope and nature of amendments it can make to the budget. This does, of course, not exclude the possibility that parliament may decide at some point to regulate this process further, for example through an ordinary act of parliament or the regulation of its procedures. Unfettered powers are uncommon on the African continent, where the Westminster “reductions only” rule or balanced budget requirements are frequently enshrined in the constitutional framework.

The Constitution defines a money bill as a bill that relates to the appropriation of money from public funds, or to taxation and other revenue measures.96 This definition follows the Westminster tradition, by which taxation and expenditure measures are given effect to in legislation. Apart from the approval requirements for an annual appropriation bill outlined above, unanticipated expenditures have to be included in a supplementary appropriation bill.97 While this provision is

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91 S. 82.
92 S. 58.
93 S. 59(2).
94 S. 59(3). Due to the numerical differences between the two houses, the House of Representatives would be structurally favoured in this process. The Senate comprises 109 seats, three from each state and one from the Federal Capital Territory. The House of Representatives is made up of 360 seats. In both houses, members are elected by popular vote to serve four-year terms.
95 S. 59(4).
96 S. 59(1) defines a money bill as “(a) an appropriation bill or a supplementary appropriation bill, including any other bill for the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Federation of any money charged thereon or any alteration in the amount of such a payment, issue or withdrawal, and (b) a bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof.”
97 S. 81(4).
not combined with a time requirement for the submission of such a bill, it nevertheless ensures that parliament’s “power of the purse” with regard to public expenditures is not undermined during budget implementation. This is broadly in line with constitutional provisions elsewhere. However, an important constitutional deficiency in the approval of revenue measures has been pointed out in the Phillips Report.98

“We observe that the 1999 Supplementary Appropriation Act was not complemented by any form of approved revenue estimate by the National Assembly … which Section 81(1) of the Constitution also enjoins the President to lay before the National Assembly. The Constitution does not specifically require the National Assembly to approve the annual revenue estimates or the financial plan of the government. This is a gap which seriously reduces the scrutiny and approval functions of the Legislature. The gap should be removed through a Constitutional amendment which requires the National Assembly to also pass a Finance Bill in addition to the Appropriation Act.”

In addition, the government has tended to interpret authorized amounts as ceilings or upper limits, rather than binding targets. It is not clear how the practice of under-spending would be viewed by the courts should the opportunity for judicial clarification arise. The extent of variance involved is substantial.99 Although the Constitution requires the National Assembly to authorize withdrawals from the National Revenue Fund, this would not seem to imply that these amounts necessarily have to be exhausted.100 But the National Assembly has also observed instances where expenditures were undertaken for new items never approved by the legislature.101 It may be overly ambitious to turn to the Constitution in seeking a resolution of this “crisis of implementation”.102 Rather, it seems that fundamental changes to the federal budget system would have to ensure more realistic estimates in the first instance, and greater control over implementation in the second. Issues such as excessive virement103 and under-spending need to be addressed by forcing greater compliance with financial regulations. These are not commonly matters addressed by constitutions.

The constitution also provides the framework for parliament’s role in the audit process. The accounts for all offices and courts of the federation are to be audited by the auditor-general, who reports to the National Assembly.104 The power of the auditor-general to audit parastatals, however, is limited to “periodic checks”,105 whereas their annual audit is left to external auditors drawn from a list provided by the auditor-general.106 The constitution does not prescribe an absolute timeframe for the submission of the auditor-general’s report to the National Assembly. It provides a relative timeframe by stipulating that the report must be submitted within 90 days of receipt of the financial statement from the

98 Budget System Review Committee, op. cit., 49–50.
99 Ukeje-Eloagu, op. cit.
100 The author is indebted to the Hon. Justice E.O. Ayoola, Supreme Court of Nigeria, for this point.
101 Comments by H.O. Olutoye, Committee Clerk, Committee on Appropriation, House of Representatives.
102 Comments by the Hon. Dr. T. Lakoju, Member of the House of Representatives.
103 The transfer of resources among different programmes or heads of expenditure within the same vote during the financial year, according to defined rules, is known as virement.
104 S. 85(1) and (2).
105 S. 85(4).
106 S. 85(3).
accountant-general. The accountant-general by 1999 had defaulted on post-1993 financial statements, which in turn hampered the work of the auditor-general. Although there are signs that this interaction is improving, one option may be to give the accountant-general currently denied constitutional status, and to establish absolute timeframes for the submission of the financial statements to the auditor-general, and the submission of the audit report to parliament.

Parliament has substantial legal powers over the appointment of the auditor-general, as the Senate has to approve the presidential candidate. A two-thirds majority vote of the Senate is also required for the premature termination of tenure. Although specific constitutional mechanisms elsewhere vary, the special protection of the auditor-general through parliament is not uncommon. But the role of the Senate in the appointment and removal processes makes for comparatively strong parliamentary influence in these matters.

The legal basis for parliament’s *ex post facto* review of government financial administration is further strengthened by the wide investigative powers granted by the Constitution to both houses of the National Assembly. Amongst others, they may investigate matters relating to the disbursement or administration of appropriated moneys. For such purposes, parliament, or a committee appointed by it, has the powers to collect all necessary evidence, and summon any person to give evidence. These are strong investigative powers that seek their match in other constitutions on the continent.

**Conclusion**

On balance it would seem that the Nigerian Constitution gives strong powers to parliament with regard to budgetary matters. Particularly prominent constitutional features that inform this judgement are the unrestricted amendment powers implied in the Nigerian Constitution, and the wide-ranging investigative powers vested in parliament and its committees. Furthermore, the role of the Senate in the appointment and removal of the auditor-general is more pronounced than in many other African constitutions. This means that there is plenty of constitutional scope for legislative activism in budgetary matters, and probably more so than in most other African countries. The Nigerian Constitution seems to reflect elements of the congressional system prevalent in the United States, and is less shaped by the legal traditions predominant in other African countries discussed in this article.

At the same time, several improvements over the current provisions are worth considering during the process of constitutional review. These include the inclusion of an explicit deadline for the tabling of the annual budget in the National Assembly, at least three months in advance of the beginning of a financial year. Apart from being in line with international best practice, this should help to prevent any future wrangles over the timing of the budget between the legislature and the executive. Secondly, a requirement should be inserted for the annual legislative approval of any new or changed revenue measures in

107 S. 85(5).
108 Budget System Review Committee, op. cit., 100.
109 S. 86(1).
110 S. 87(1).
111 S. 88(1)(b)(ii).
112 S. 89.
a Finance Bill. Finally, clear absolute timeframes also seem desirable for the submission of the audit report to the National Assembly. This might be coupled with a constitutional recognition of the accountant-general's duty to prepare the financial statements, and a clear deadline for their submission to the auditor-general. Nine months after the end of a financial year seems a reasonable and adequate overall deadline for the submission of the audit report to the legislature. This would ensure its relevance and usefulness for current and future budget processes.

Clearly, however, there are limits to what constitutions can and indeed should do. Written documents will develop their own dynamics depending on the particular context within which the application of their mechanisms and provisions unfolds. Party political dynamics, socio-economic conditions and the personalities of powerful political actors might be some of the decisive factors contributing to these dynamics. What this means in the context of this discussion is that political actors remain responsible for fostering legislative–executive relations that match their preferences, and for safeguarding the broader public interest.