

## IV. Appropriation Procedure - An Aspect of the Budgetary Process of Nigeria

Communication by Mrs R. A. AHMADU (for Mr Ibrahim SALIM) (Nigeria), Ouagadougou Session (September 2001)

### Introduction

There is no gainsaying the fact that money is the breath of life of any government, however formed. While in an autocracy or under a military regime, the sole authority forcefully imposes taxes and dispenses or appropriates funds unilaterally and arbitrarily, in a democratic setting, the elected representatives of the people are constitutionally mandated to sanction imposition of taxes and to appropriate funds, after considering the proposals in form of Estimates placed before them by the Executive. In other words, all matters involving expenditure and revenue or all financial matters submitted by the Executive must bear the stamp of authority of the legislative body in the first instance.

To this end, in virtually all Parliaments of the world, there is this common provision in their countries' constitutions as to whose duty or responsibility it is to pass laws. This duty is invariably bestowed on the Legislature. The responsibility is indeed more pronounced in regard to money matters - that is 'Appropriation' and 'Finance' including even bills whose subsidiary elements involve money. In order, however, to implement the constitutional provision in practice, Parliaments employ *rules and regulations* commonly known as '**Rules**', '**Standing Rules**', or '**Standing Orders**' which are generally similar for legislatures of democratic countries, but may Vary in operational details.

### 1. The Objective of this Paper

The objective of this paper is to articulate the Nigerian Legislative Procedure in regard to the passing of an Appropriation Bill. While in a general sense,

the National Assembly of Nigeria operates Rules (or Standing Orders) similar to the Rules of most Parliaments of the world, in practice, our Rules are in essence a hybrid of the British House of Commons Rules (Standing Orders) and the American Congressional Rules (of the House of Representatives) or Standing Rules (of the Senate). Secondly, however, there are a few areas of our procedure which are typically Nigerian, but certainly not against democratic norms; and indeed may be found in practice to be more democratic in nature than similar areas of the Standing Orders of the British House of Commons or the Rules and Standing Rules of the US Congress.

In Nigeria's own experience therefore, the one distinct and unique deviation from the British House of Commons practice and the American Congressional procedure is in the area of *Appropriation*. The Nigerian procedure for the passage of an Appropriation Bill is based on our own innate character which seeks to identify detailed treatment of Appropriation Bill beyond the confines of the Committee on Appropriation. It also involves all Standing Committees of the Legislature in the *appropriation of funds for public expenditure*.

Before treating our present legislative procedure for Appropriation, let us narrate our earlier experience under the past Nigerian military regimes.

## **2. Experience under the Military Regimes of January 1966 - September 1979 and January 1984 - May 1999**

Our present procedure in regard to Appropriation Bill is a far cry from our experience under all the military regimes we were subjected to from January 1966 to September 1979 and January 1984 to May 1999. For those of us who have never experienced governance under any military regime, it will no doubt appear outlandish to be governed by Decrees which do not take into consideration the feelings of the people or public opinions, and public interests as well as their expectations, or to be ruled by an oligarchy which does not even entertain views concerning the welfare of the governed, before churning out laws. So was our experience under our past military regimes.

Indeed, with their seizure of power, the military combined both Executive and Legislative functions. While the usurpation of executive functions is understandable because the military must govern at any rate, making of laws by Decrees without adequate consultation and the consent of the governed expresses in one form or another, was what the Nigerian people had to endure.

Thus, decisions affecting the lives of the people were taken and rolled out as laws called Decrees without much thought as to whether those laws

adequately met the aspirations of the governed. Likewise, the idea of a bill passing through stages involving debates, public hearings and other essential procedural steps were the antithesis of military procedure for churning out Decrees by the highest military body - the Supreme Military Council or the Armed Forces Ruling Council, or whatever other appellation the military decided to label itself. Oftentimes, you could just hop into bed in the night and the following morning, you woke up to learn of a new law about which you had no previous inkling, let alone having an opportunity to contribute ideas directly or indirectly to its formation (that is, through public debates in workshops, on the radio or television or through articles published in the newspapers).

This is substantially true in regard to all decrees issued by the military, including the 'Appropriation' decrees. The Appropriation of public funds was thus made largely in consonance with the wishes and desires of the military rulers! Stories were afloat of members of the ruling oligarchy manoeuvring capital votes to develop their areas of the country and promote other personal interests. In effect, accountability by the government to the people was not all that an important matter.

In short, since it was anything the military wanted that became law - allocation of funds for capital developments were also made willy-nilly. Of course, as the areas of the constitution dealing with finance etc., had been suspended when the military seized power, no-one could question the legitimacy of the military decisions in the arbitrary allocation of funds both under capital and recurrent expenditure.

Having had a glimpse of the situation under the military, we shall now turn to the present procedure for the passage of the Appropriation Bill. We shall start with its background.

### **3. Background to the Nigerian Procedural Innovation on Appropriation**

In 1979, with the introduction of the Presidential System of Government, the working of our legislatures was facilitated by tapping from the legislative procedures of both the British House of Commons Practice which we followed in our First (1960-65) Republic Legislature based on the Parliamentary System, and the American Congressional Process adopted from our Second Republic Presidential System. Hence ours became largely a hybrid of the two systems in most areas of our legislative procedure.

However, in respect of Appropriation, we found it most inappropriate to adopt the parliamentary practice since Ministers were no longer legislators. One would have thought "OK let's go the Congressional way wholly, by doubling the size of the Appropriation Committee and getting out thirteen or so Sub-Committees, each charged with the Heads Estimates of a number of Ministries". In effect, the Appropriation Committee would have taken charge of 'Appropriation' in its entirety.

But members objected to this procedural style and felt, "If the Standing Committees are charged with functional or oversight responsibilities for Ministries, these Standing Committees should equally be responsible for proposing appropriation of funds to the Ministries under their charge". They further contended, "if an organisation, is charged with specific functions, its responsibility in regard to those functions should be all embracing". Therefore, if their Standing Committees were functionally responsible for Ministries, they should also be responsible for appropriation of funds to those Ministries.

After days of wrangling as to the best line of approach, it was finally resolved that during appropriation, all Committees would become Sub-Committees of the Appropriation Committee. This goes to underscore the Nigerian culture, that in matters of finance, the person directly affected or charged must have a say in the disbursement of funds to his charge. One may also add "it is not in Nigeria's character to allow others to decide what amount of money should be expended on their behalf or in their interest without any say on their part".

#### **4. Summary of the Procedure for the Passage of Appropriation Bill**

Since it is the function of the Executive Arm to implement or execute the laws passed by the Legislature, and being also the Arm of Government directly involved in governance, the Executive has the responsibility for initiating a draft Appropriation Bill and preparing the accompanying Draft Estimates, placing both before the Legislature. Once both the Draft Bill and the Estimates are in the possession of the Legislature, the procedure for dealing with them until the Estimates are approved and the Appropriation Bill is passed into law proceeds, in summary, along the following steps:

- (i) First, at the beginning of every National Assembly (the life-span of which is four years), Standing Committees are established along functional lines (like the American Congressional Committees). Thus they bear appellations of Ministries for which they have oversight responsi-

bilities; unlike the British Parliamentary System where Standing Committees are only established to consider bills allocated to them by the Speaker.

- (ii) Secondly, the Appropriation Committee being a Standing Committee, is charged with the specific responsibility of appropriating funds for the execution of authorised programmes, but goes about it in a *unique* way.
- (iii) Thirdly, after the *Second* Reading, an Appropriation Bill goes to all the Standing Committees as explained in (iv) below.
- (iv) After the Second Reading, while the Appropriation Bill itself goes straight to the Committee on Appropriation, the Heads of Estimates go to their various functional Sub-Committees. Thus each Standing Committee becomes a Sub-Committee of the Appropriation Committee, to deal with the Head of Estimates pertaining to the Ministry for which it has functional responsibility.

Before we go into further details of Nigeria's unique procedure in regard to Appropriation, let us touch briefly the procedures under the Westminster (House of Commons) System and the American Congressional Process, since as earlier stated, our own legislative procedure is a hybrid of the British Parliamentary and American Congressional Procedures.

### **5. (a) British Parliament's Procedure on Appropriation or Consolidated Fund Bills**

It is sufficient here to quote briefly from *Erskine May*:

"When a motion shall have been made for the Second Reading of a Consolidated Fund or an Appropriation Bill, the question thereon shall be put forthwith. No order shall be made for committal of the bill and the question for third reading shall be put forthwith.

Thus all grants of Supply voted in respect of whatever Estimate-Main, Supplementary, Excess - require to be authorised by legislation. The bills for this purpose are known as Consolidated Fund and Consolidated Fund (Appropriation) Bills which are brought in upon the relevant Estimates Resolutions as soon as they have been agreed to. (*p. 758 of Erskine May, 22nd Edition*)

### **(b) The American Congressional Procedure in regard to Appropriation**

#### *(i) In the House of Representatives*

The US House of Representatives has 12-13 Sub-Committees of the Appropriation Committee. While the full Committee is composed of at least 50 members, each Sub-Committee has 7-8 members. A Sub-Committee may meet daily for four or five hours for several months to complete its work. Thereafter a bill is drafted and the Sub-Committee will meet to 'mark it up', that is, to make specific alterations up or down to the figures put in by the President.

The Sub-Committees are set up along functional lines. At the end of its task on appropriation, each Sub-Committee prepares an appropriation bill. In the end, about 14 appropriation bills would have been passed into law in a year.

#### *(ii) In the Senate*

By immemorial custom, general appropriation bills dealing with a number of subjects originate in the House of Representatives, though bill appropriating for single specific purposes have originated in the Senate. Once the Senate has received a bill from the House, it has equal powers,

Like the House, the Senate has a Committee on Appropriation with the same task of financing programmes already authorised by legislative committees and of financing them as economically as possible. In considering the bill, the Senate follows broadly the same procedure as in the House of Representatives, i.e. parallel system of Sub-Committees exists.

## **6. Details of the Nigerian Procedure on Appropriation**

We can now go into the details of Nigeria's own unique procedure after the brief comparative analysis above:

- (a) In respect of ordinary bills, introduction in both Houses of the National Assembly follows the congressional style. Proposals come from the Executive principally, and from Members *directly* (that is by members themselves sponsoring bills jointly and individually) and *indirectly* (that is by members sponsoring bills on behalf of NGOs - Trade Unions, Industrial and Commercial Concerns as well as Professional Associations (Bar, Med-

ical, etc.), and other Private bodies and individuals. (We all know that in the British Parliamentary System, where Ministers are also Members of the Legislature, most bills are introduced by Cabinet Ministers and only very few by floor or private Members.)

- (b) In the Introduction of 1st Reading and 2nd Reading of a Bill, the Nigerian procedure follows the British rather than the American Congressional System.
- (c) In respect of Appropriation Bills, proposals come only from the Presidency, to each of the Houses of the National Assembly. It, like ordinary bills, undergoes *1st and 2nd Readings*.
- (d) It is in the stages following after the *2nd Reading*, that Nigeria's own procedural style comes into play. Thus, after the 2nd Reading (which is a general debate of the principles of the bill on the floor of the House), when the details of the Appropriation Bill, as contained in the Estimates have been schedules to Committees, that the distinct Nigerian features come into play as follows:
  - i. The Committee on Appropriation takes charge of the whole endeavour as Coordinator and Floor Manager.
  - ii. Each Standing Committee is given charge over the Head of Estimates of the Ministry for which it has oversight or functional responsibilities.
  - iii. During Committee deliberations on Appropriation, each Standing Committee transforms into a Sub-Committee of the Appropriation Committee.
  - iv. During sittings of the Sub-Committees on Appropriation, a member of the Appropriation Committee sits in with each Sub-Committee, in an advisory capacity only, as he does not vote or interfere with the Sub-Committee's proceedings and final report.
  - v. While the Chairman of the Appropriation Committee has the overall responsibility for coordinating the works of all the Sub-Committees on Appropriation, the Chairman of each Sub-Committee reports, at the end of his Sub-Committees deliberations, to the Chairman of the Appropriation Committee.
  - vi. When the Chairman of the Sub-Committee has presented his Sub-Committee's Report to the Appropriation Committee's Chairman, a day is fixed for deliberation between that Sub-Committee and the Appropriation Committee, whose Chairman presides over the deliberations while the Chairman of the Sub-Committee presents his Sub-Committee's Report, defending it.

- vii. After successful deliberation, a clean copy of the Sub-Committee's Report is prepared, ready for presentation on the Floor of the House.
- viii. The Chairman of the Appropriation Committee then takes a date from the Chairman of the Rules and Business Committee of the House of Representatives/Rules and Procedure Committee of the Senate, for the presentation or tabling of the Sub-Committee's Report on the particular Head of Estimates handled by the Sub-Committee (e.g. Head 24: Ministry of Industries - Sub-Committee on Industries).
- ix. On the date of the presentation of the Sub-Committee's Report, including the recommendations, the Chairman of the Appropriation Committee is the *Floor Manager* while the Chairman of the Sub-Committee whose Report is being presented is the *Assistant Floor Manager*. Immediately after the presentation of the Report to the House, copies are circulated to all Members. At the same time, the Chairman of the Rules and Business Committee alerts Members of the date the Report will be formally considered by the House in Committee.
- x. On the date for consideration of the Report of the Sub-Committee, the Chairman of the Appropriation Committee, being the Floor Manager, pilots the Report and moves resolution on each item of expenditure as recommended in the Report, while the Chairman of the Sub-Committee assists him
- xi. (a) For the consideration of the Report, the House resolves itself into a Committee of the Whole House to pass the resolutions on each item of the Head of Estimates.  
(b) An alternative and time saving device is to *combine and modify* (ix) and (x) above by presenting an *omnibus* Report, containing the Reports of all the Sub-Committees in the Committee of the Whole House.

This omnibus Report is presented and floor-managed by the Chairman of the Appropriation Committee alone. The deliberation in the Committee of the Whole House may take three or more days. With the final approval of the Report (unlike in the United States, Sub-Committees do not prepare separate Draft Bills at the end of their work), all aspects of the Estimates are covered by a single Appropriation Bill to which is attached a Schedule of Heads of Estimates, stating the total amount approved for each Head.

- xii. After the essential Resolutions have been passed on the whole Heads of Estimates, the Bill, with the Schedule summarising the amount of each Head of Estimates on which resolutions had earlier been passed attached, is brought back into the House and it goes to the **Report Stage**.
- (e) The Bill is thereafter reported to the House and after the adoption of the Report stage, the Bill goes through the **Third Reading** and is passed as the Appropriation Bill and sent to the other House.
- (f) Both Houses, more often than not, come out with different versions and, like the Congressional process, the two Houses appoint equal number of Conferees from their Houses (invariably from the Appropriation Committee of the House of Representatives and the Appropriation and Finance OCommittee of the Senate), to go into Conference to resolve the differences (i.e. areas of disagreement).
- (g) Finally, the two Houses will adopt the Conference Report and thereafter pass the Appropriation Bill. All the amendments made by the National Assembly will have been incorporated in the Draft Estimates and a *Clean Copy* produced as the Approved Estimates.
- (h) The Clean Bill, accompanied by the Approved Estimates, is thereafter sent by the Clerk to the National Assembly to the President for his Assent. The Bill then becomes the '**Appropriation Act**'.

## **7. Innovations in the Nigerian Legislative Set Up**

I venture to say that, in matters of legislative procedure, Nigeria's innovation as an amalgamation of and amendment to the adopted legislative processes of the Parliament *cum* Presidential Systems, provides a case study of a unique but democratic way of doing things. Other innovations of our own, if closely examined, produce a development aspect of democratic principles worth emulating in a federal set-up like ours, or in a system of power devolution to the Regions as in the UK today. They are:

- (A) *Setting up a Secretariat in the National Assembly to cater for the common interests of National and State Assemblies by extending facilities and other advantages to State Houses of Assembly in the areas of legislative procedure, training, technical assistance and general welfare package for members and staff.* This is akin partly to the functions of the Overseas Office of the British House of Commons and those of former Legis 50 (now National

Conference of State Legislatures - NCSL) representing the 50 USA State Legislatures; but I day say we appear more advanced in cooperative federalism.

(B) *Holding periodic Conferences of Presiding Officer of National and State Assemblies with a view to streamlining and, or amending legislative procedures, as well as proposing constitutional amendments to ease governance.* This highlights the fact that legislative procedure is a dynamic thing. British House of Commons reviews and innovates procedures to replace archaic ones to fit modern times. Likewise, changes in procedure take place in the US Congress. Nigerian Legislatures cannot therefore be an exception, more particularly in our tremendous efforts to cover our lost years due to military incursion into government.

(C) *The political party arrangement in both Houses of the National Assembly.* Both Britain and the USA have a two party system. In Britain, they are called the Government and the Opposition and in the US the Majority and Minority Parties. How do we go about it in a multiparty Legislature? In the Second Republic, we had a five-party legislature and in the present National Assembly we have a three-party legislature.

Under our present presidential system, what we did was to appoint the leader of the party with the highest number of members, as Leader of the House, while leaders of the other parties were accorded official recognition as leaders of their respective parties but provided with paraphernalia of office to make them stand almost at par with the Leader of the House. It goes without saying that the allocation of seats in Committees follows the pattern of proportional representation in the Chamber.

In practice, whoever is the Leader of the House always carries along with him the leaders of the other political parties.

(D) *Constitutional provision establishing the post of Clerk to the National Assembly whose responsibility encompasses the two Houses - the Senate and the House of Representatives.* The Clerk to the National Assembly is the Accounting Officer for the whole of the National Assembly. He is also the Chief Legislative Officer as well as the Chief Administrative Officer for both Houses.

However, the Rules of the Houses allow for the appointment of a Clerk for the Senate and a Clerk for the House of Representatives. These Clerks are delegates to the Clerk of the National Assembly in the performance of legislative and administrative functions in respect of each House - and

this considerably eases administration of the affairs of the National Assembly.

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**Mr Mamadou SANTARA, Vice-President**, thanked Mrs AHMADU and proposed to take questions on the communication together.

**Mr Rex OWUSU-ANSAH** asked for more details about how the President was allowed to spend money before budget approval was given.

**Mrs AHMADU** said that under the Constitution the President could spend up to a third of this year's budget in order to allow continuity. Previously there had been problems because under military rule the budget had been on a different basis and it had been impossible to provide a model to carry over from. The President had used this as the basis for claiming that Parliament was stopping him from carrying out his essential work.

**Mr G.C. MALHOTRA** (India) asked what was done to modifications which were proposed to the budget.

**Mrs AHMADU** said that this was also a problem. The National Assembly thought the budget was allocated wrongly. An estimate was amended and this created many problems. The President did not implement some parts of amended budgets and this was in breach of the Constitution.

**Mr G.C. MALHOTRA** (India) asked again what was done about changes which had been proposed.

**Mrs AHMADU** said that the National Assembly could change but could not implement the budget.

**Mr Mamadou SANTARA, Vice-President**, thanked Mrs AHMADU for her clear presentation.

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