THE 2010 FEDERAL APPROPRIATION BILL AND THE FISCAL RESPONSIBILITY ACT

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By

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ACKNOWLEGEMENT

CSJ acknowledges the support of the Fiscal Responsibility Commission towards the research and publication of this Analysis. The research support of Dr William Fonta is also acknowledged.

ABBREVIATIONS

CRF	Consolidated Revenue Fund
BOF	Budget Office of the Federation
CRFC	Consolidated Revenue Fund Charges
CSJ	Centre for Social Justice
CSOs	Civil Society Organisations
DMO	Debt Management Office
ECA	Excess Crude Account
EXCOF	Executive Council of the Federation
FGN	Federal Government of Nigeria
FRA	Fiscal Responsibility Act
FRC	Fiscal Responsibility Commission
FSP	Fiscal Strategy Paper
GDP	Gross Domestic Product
HOR	House of Representatives
JVC	Joint Venture Call
MBPD	Millions of Barrels Per Day
MDAs	Ministries, Departments and Agencies
MDGs	Millennium Development Goals
MOF	Ministry of Finance
MTEF	Medium Term Expenditure Framework
MTSS	Medium Term Sector Strategies
NEEDS	National Economic Empowerment and Development Strategy
NNPC	Nigeria National Petroleum Corporation
PEM	Public Expenditure Management
PPA	Public Procurement Act
RCP	Reference Commodity Price
USD	United States Dollars
VAT	Value Added Tax
WHO	World Health Organisation

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Introduction

This Analysis is designed with the objective of mainstreaming the provisions of the Fiscal Responsibility Act (“FRA”) in the 2010 Appropriation Bill, ensuring respect and promotion of the ideals of the FRA in the budgetary process. It undertakes a study of the 2010 Appropriation Bill as it relates to its compliance with the FRA with the intention of making the findings available to the Fiscal Responsibility Commission (“FRC”), the legislature, the executive, civil society organizations and the public.

This is the first Appropriation Bill since the FRC commenced work and it will be interesting to see how the Commission intervenes in the appropriation process and subsequent implementation of the Appropriation Act with a view to guaranteeing respect for the FRA. CSJ has embarked on this Analysis with the support of the FRC. The Act makes every Nigerian a stakeholder to ensure full implementation and the realization of its objectives. The functions of the FRC under section 3 of the FRA include to;

> *monitor and enforce the provisions of this Act and by so doing promote the economic objectives contained in section 16 of the Constitution;*
>
> *undertake fiscal and financial studies, analysis and diagnosis and disseminate the result to the general public;*

The Analysis reviewed the theoretical and practical aspects of the Appropriation Bill as it relates to the FRA. The Analysis involved literature review on the Appropriation Bill, the FRA and its emergent best practices, review of current financial management regulations, reports of the Ministry of Finance (“MOF”) and Budget Office of the Federation (“BOF”), and relevant international agencies like the World Bank. The Analysis also held discussions to clarify knotty issues with a number of stakeholders within the government and civil society.

The idea of the Analysis is to identify areas where the Appropriation Bill needs to be reworked and fine-tuned so as to ensure compliance with the FRA. The review and recommendations contained herein will also facilitate the preparation and approval of subsequent Medium Term Expenditure Framework (MTEF). It will further provide a template and precedent for review and analysis of future Appropriation Bills in relation to the FRA. The draft report has been the discussion paper for a public forum where representatives of the legislature, FRC, civil society and professional groups have analysed the Appropriation Bill. The inputs from stakeholders have been used to fine-tune and finalise the report.

Executive Summary

Chapter One of the Analysis deals with the background issues vis, the Medium Term Expenditure Framework ("MTEF") 2010-2012 which anchors the Appropriation Bill. It discussed the timing of the MTEF and the Appropriation Bill, the openness and inclusivity of the MTEF preparation process and ended by reviewing the core issues in the 2010-2012 MTEF. The issues reviewed include the deficit, the oil economy, reduced capital expenditure, tension between monetary and fiscal policy, economic growth projections and the relationship between the Fiscal Strategy Paper and the economic objectives of government in section 16 of the Constitution.

Chapter Two dwelt on the general overview of the Appropriation Bill. The Appropriation Bill is based on the following macroeconomic assumptions: oil production capacity of 2.088mbpd; oil price benchmark of US$57/barrel; Joint Venture Cash (JVC) call of US$5billion; average exchange rate of N150 to the US dollar; target inflation rate of 11.2% and targeted real Gross Domestic Product (GDP) growth rate of 6.1%. The projected expenditure is N4,079 trillion expected from the following major sources: Opening or Unspent Balance brought forward from 2009 fiscal year (N300 billion); 48.5% FGN Share of Federation Account (1,831.08 billion); 14% FGN Share of Value Added Tax (70.51 billion); and Estimated FGN's Balance of Special Accounts as at December 2009 (15.48 billion) Naira respectively. A deficit of N1,562.60 trillion is proposed. The N4,079 trillion is to be disbursed as follows: Statutory Transfers (180.28 billion); MDAs Recurrent Non-Debt Expenditure (1,361.7 billion); Capital Expenditure (1,370.82 billion); Debt Service (517.1 billion); and Consolidated Revenue Fund Charges (649.8 billion) respectively. In overall terms, the proposed expenditure represents a 31.5% increase over 2009 estimates.

The Chapter reviewed the reasonableness of the Reference Commodity Price and projected production of crude oil, the quantum of expenditure and the resulting deficit, deficit financing and borrowing. It noted that the deficit of -4.8% of the GDP is not in consonance with FRA's provisions. The quantum of proposed expenditure also contradicted the MTEF aggregates in statutory transfers, total debt service, capital expenditure and recurrent (non debt) expenditure.

With the poor implementation of the capital budget, unexpended monies to be returned to treasury are supposed to be higher than projected. The Chapter discusses growth projections, the need for the submission of development targets that impact on the standard of living; the budgets measures on cost control and evaluation of results of programmes financed with budgetary resources. It further discusses joint venture cash calls funding gap arrears, the petroleum subsidy debate and estimated revenue fom scheduled corporations.

Chapter Three is the concluding chapter and dwells on conclusions and recommendations. The recommendations are as follows.

- The preparation of the MTEF should start in April of every year so as to meet the deadline for its consideration and endorsement by the EXCOF before the end of the second quarter in June.
- The MTEF so considered and endorsed by the EXCOF should be forwarded for the National Assembly's approval before the end of July.
- Although the Constitution allows the President to present the Appropriation Bill to the Legislature at any time, best practices indicate that the President should present the budget to the legislature not later than August, four months to the end of the financial year.
- The National Assembly is also enjoined to conclude budget deliberations and passage before the end of the first week in December.
- The consultations leading to the preparation of the MTEF should no longer be perfunctory. Stakeholders should have access to information anchoring the macroeconomic variables and aggregates informing key policy decisions before the consultations.
- The consultations should be open to all stakeholders who have the capacity to make inputs into the process.
- The MTEF should be made to govern the budget.
- The benchmark price of crude oil should not be the same as the actual market price.
- The deficit of -4.8% of the GDP is excessive and should be brought down to 3% of the GDP.
- The geometric increase in local debts and borrowing should be restrained as the current total national indebtedness of $26 billion and new proposals for borrowing will not be sustainable in the medium term.
- Borrowing should be used for human development and capital expenditure, obtained at low interest rates and subject to long periods of amortisation. The idea of borrowing to finance unproductive expenditure should be discarded.

- All projects that will be financed through borrowing must have specific cost benefit analysis to be submitted by the executive for legislative approval.

- Considering that the capital budget of 2009 amounts to N1,022.3 billion and less than 60% was utilised, not less than N450 billion is expected to be returned to the Treasury.

- If a real GDP growth rate of 6.1% or double digit GDP growth and development is be realised, more budgetary investments should be channeled to the growth drivers. The capital vote should be increased to at least 40% of the budget while capacity deficits in MDAs leading to low absorptive capacity in capital budget implementation should be plugged. Sanctions should be considered against ministers and accounting officers who fail, neglect and refuse to implement their capital budgets.

- Future budgets should be accompanied by development targets on the number of expected new jobs, targets for the realization of the rights to education, health, adequate housing and to sustainable improvements in the standard of living to be achieved following the utilization of budgetary resources.

- Measures on cost control should be holistic and effectively cut costs across the board and the highest ranking public officials should lead by good examples to other stakeholders in government. It should also link cost control to anti corruption measures.

- Beyond expenditure figures and outturns, future budgets should contain candid evaluations of results of programmes financed with budgetary resources of the last eighteen months including parts of the outgoing year.

- There should be an upward review of sums due as Treasury revenue from scheduled corporations. This should be accompanied by enhanced oversight of their operations by the legislature and follow up on audit recommendations of the Auditor-General for the Federation.

- If ongoing debates lead to the removal of petroleum subsidy, the executive and the legislature should consider channeling the savings from the removal to a special ring-fenced fund provided by law and dedicated to the social and infrastructure sectors.

- Provisions for Joint Venture Cash Call funding should be thoroughly reviewed by the legislature in view of the disclosures in various audit reports indicating that the public revenue may have suffered an avoidable loss due to the mismanagement of budgeted resources by NNPC and it subsidiaries.

Chapter One

ANCHORING THE 2010 APPROPRIATION BILL

1.1. BACKGROUND TO THE 2010 APPROPRIATION BILL

The Fiscal Responsibility Act 2007 ("FRA" or "Act") is made as an Act to provide for the prudent management of the nation's resources, ensure long-term macro-economic stability of the national economy; secure greater accountability and transparency in fiscal operations within a medium term fiscal policy framework and the establishment of the Fiscal Responsibility Commission ("FRC") to ensure the promotion and enforcement of the nation's economic objectives, and for related matters[1]. The Act inter alia provides for budget preparation, implementation and reporting process and seeks to open up the fiscal management and budgetary process to greater transparency and accountability whilst streamlining the rules.

Section 18 of the FRA provides as follows:

> *Notwithstanding anything to the contrary contained in this Act or any other law, the Medium-Term Expenditure Framework shall-*
>
> *(1) be the basis for the preparation of the estimates of revenue and expenditure required to be prepared and laid before the National Assembly under section 81 (1) of the Constitution.*
>
> *(2) The sectoral and compositional distribution of the estimates of expenditure referred to in subsection (1) of this section shall be consistent with the medium-term developmental priorities set out in the Medium-Term Expenditure Framework.*

Essentially, it is provided in the FRA that Medium Term Expenditure Framework ("MTEF") shall form the anchor and the basis for the preparation of the annual budget so that policy, planning and project activities can be linked for the effectiveness of public expenditure. The MTEF is designed to achieve greater aggregate fiscal discipline, operational and allocative efficiencies in public expenditure management ("PEM") decisions. The MTEF is prepared through a process that should start from the Ministry of Finance and the Budget Office of the Federation to the respective Ministries,

[1] This is the long title of the Act.

Departments and Agencies ("MDAs") in the preparation of their Medium Term Sector Strategies ("MTSS"). It involves the Minister of Finance consulting with diverse stakeholders including civil society organizations, organized private sector and agencies of government such as the National Planning Commission, Joint Planning Board, National Commission on Development Planning, National Economic Commission, Central Bank of Nigeria, National Bureau of Statistics and Revenue Mobilisation Allocation and Fiscal Commission[2]. The resulting MTEF is to be considered and endorsed by the EXCOF[3] and take effect upon approval by a resolution of the each House of the National Assembly[4]. Thus, the law designs the MTEF process comprehensively to give a voice to every stakeholder in the determination of national priorities for public expenditure.

1.2. TIMING OF THE MTEF AND THE APPROPRIATION BILL

The MTEF is supposed to be considered and endorsed by the EXCOF before the end of the second quarter of the year[5]. It is expected that the MTEF will be sent for legislative approval immediately after the EXCOF endorsement. The timing of this act under the law is deliberately made to ensure that the budget preparation process for the next year commences on time since the first year estimates of the MTEF will inform the Appropriation Bill for the next year. The early completion and adoption of the MTEF will also facilitate the revenue and expenditure forecasts of states considering that most states rely on Federation Accounts Allocation which is mainly derived from oil revenue. Thus, the benchmark price of crude oil, projected number of barrels produced per day, Value Added Tax ("VAT"), etc forecasts will facilitate state level forecasting of expected revenue.

However, the MTEF was not concluded by the Minister of Finance before the end of the second quarter and as such, he could not transmit it to the EXCOF for their consideration and endorsement within the time stipulated by law. The MTSS formulation that forms the background of the MTEF did not start until the end of June 2009[6]. Further, it was sent to the National Assembly rather late and considering their recess, the National Assembly did not consider the MTEF until November 2009. To even compound matters, the House of Representatives Finance Committee chairman indicated that it was the first time the MTEF was sent to the legislature by the executive for their approval. Thus, the Legislature had no precedent to rely upon.

[2] Section 13 o the Act.
[3] Section 14 (1) of the Act.
[4] Section 14 (2) of the Act.
[5] Section 14 (1) of the FRA.
[6] See page 41 of the Fiscal Strategy Paper 2010-2012.

The result of the above developments was that the Appropriation Bill 2010 was presented late to the National Assembly on November 24 2010. This is clearly against the spirit of the FRA which indirectly provides for early Appropriation Bill presentation by the President to the National Assembly and the passage of the Bill into law before the beginning of the New Year[7]. However, a drama in the National Assembly on the venue for the presentation - a veiled contest for seniority and primacy between the Senate and the House of Representatives delayed the eventual presentation of the budget by about one week. The practice had been for a joint session of the National Assembly to be convened for the presentation. However, this unusual contest gave opportunity for deeper reading and understanding of section 81 of the Constitution which actually required the President to cause the Appropriation Bill "to be prepared and laid before each House of the National Assembly". Thus, the joint sitting of the Senate and the House of Representatives to receive an Appropriation Bill was not a constitutional requirement but a convention of convenience.

The timing challenge seems to be a carry over from previous years - the 2008 Budget was signed into law on April 14 2008. In the same year, there was the 2008 Budget Amendment Act assented in October 2008 whilst a Supplementary Budget Act was assented on November 13 2008. The 2009 Budget was assented to on March 10 2009 whilst a Supplementary Budget was presented in late November and only assented to in late December of the same year. In these years, the budgets were usually presented in late November. To compound matters and to create further confusion, there were also requests for virement in 2009 despite the Supplementary Budget.

1.3. THE OPENESS AND INCLUSIVITY OF THE 2010-2012 MTEF PREPARATION PROCESS

The Act expects the Minister to give opportunities to a diversity of stakeholders to make inputs into the MTEF. By section 13 of the Act, it is provided that:

> *(1) The Minister shall be responsible for the preparation of the Medium-Term Expenditure Framework.*
>
> *(2) In preparing the draft Medium-Term Expenditure Framework, the Minister-*
>
> > *(a) may hold public consultation, on the Macro-economic Framework, the Fiscal Strategy Paper, the Revenue and Expenditure Framework, the strategic, economic, social and*

[7] If the MTEF is ready by the end of the second quarter and goes for the approval of the National Assembly in July, there is no reason for the Appropriation Bill not to get to the legislature before August and eventually passed before the beginning of the New Year.

> *developmental priorities of government, and such other matters as the Minister deems necessary;*
>
> *Provided that, such consultations shall be open to the public, the press and any citizen or authorized representatives of any organization, group of citizens, who may attend and be heard on any subject matter properly in view;*

The Ministry of Finance and the Budget Office of the Federation have been inviting civil society organizations ("CSOs") to MTSS sessions of MDAs. However, the criteria used in selecting CSOs to participate in the MTSS process appear opaque and unexplained. A number of groups with clear capacity in the budgeting process have been excluded and some groups with no capacity to make inputs into the process have been invited. At the earlier period (2007-2009 MTSS sessions), CSOs were not allowed to *participate in the review of budget commitments with an implication that they had no knowledge of what the indicative envelopes for each sector or MDA was*[8]. CSOs did not also participate in the documentation stage while costing and allocation of envelopes were not done at the strategy sessions[9]. Further, access to timely and relevant information hampered full participation by CSOs. However, information from CSOs that participated in the 2010-2012 MTEF preparation indicates that a lot has improved between the first sessions and current sessions. CSOs as part of the Sector Planning Teams are allowed to participate in the strategy and costing sessions of the programme. But the sore point remains the exclusionary process of denying competent groups participation in the process. A situation where critical stakeholders and CSOs are excluded, because of their publicly expressed views may not augur well for transparency, accountability and public faith in the system.

The "public consultation" held by the Minister of Finance for the 2010-2012 MTEF was rather perfunctory. The expectation was that participants will have access to background information on the macroeconomic variables and aggregates informing key policy positions before the consultation. This could be made available on the website of the Ministry of Finance ("MOF") and the Budget Office of the Federation ("BOF") at least one week to the consultation and stakeholders advised of its availability. A situation where an expert uses power point slides to run through a presentation (that was prepared by a team of experts in two to three months) to an audience in thirty minutes or one hour cannot be expected to elicit a meaningful input or comment. The intention of such "consultation" is clearly to mesmerize and bambozle participants and not an opportunity to elicit inputs to the process.

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[8] Civil Society Participation in the 2007-2009 Medium Term Sector Strategies, edited by Oji Ogburueke for Action Aid Nigeria, 2006.

[9] Action Aid, supra.

1.4. ISSUES IN THE MTEF 2010-2012

A. Deficits: Increased fiscal deficit forecast from N836.60 million in 2009 to N1,026.04 billion in 2010 representing an increase in the deficit from -3.02% of GDP to -3.28% of GDP. Also the target of 2011 spending will amount to -3.10% of GDP. These are not signs of fiscal progress. Compare the foregoing with the provisions of sections 12 (1) and (2) of the FRA:

> *The estimates of-*
>
> *(1) aggregate expenditure and the aggregate amount appropriated by the National Assembly for each financial year shall not be more than the estimated aggregate revenue plus a deficit, not exceeding three percent of the estimated Gross Domestic Product or any sustainable percentage as may be determined by the National Assembly for each financial year.*
>
> *(2) aggregate expenditure for a financial year may exceed the ceiling imposed by the provisions of subsection (1) of this section, if in the opinion of the President there is a clear and present threat to national security or sovereignty of the Federal Republic of Nigeria.*

The MTEF has stated Government's intention to borrow to fund the deficit. The provisions of section 41 of the FRA should be constantly reflected in borrowing decisions:

> *Government at all tiers shall only borrow for capital expenditure and human development, provided that such borrowing shall be on concessional terms with low interest rate and with a reasonably long period of amortization…*

Also the MTEF states that the proceeds of privatization, uncollected signature bonuses and revenues from the implementation of public private partnerships may be used to fund the deficit. But their use in funding recurrent expenditure is barred by section 53 of the FRA:

> *The proceeds derived from the sale or transfer of public properties and rights over public assets shall not be used to finance recurrent and debt expenditure, provided that such proceeds may be used to liquidate existing liabilities directly charged against such properties or assets.*

From the 2009 budget, the above sources of funding the deficit were mentioned. With the exception of borrowing from the domestic market, little or nothing has come from the other sources to fund the deficit. Thus, they are unreliable sources of funds.

B. The Oil Economy: A good part of the MTEF is dedicated to the study, review and projections of the volatile and undulating price movement of oil. So many years after diversifying the economy has become the national mantra, there is nothing in the

MTEF concretely pointing in the direction of weaning the economy from dependence on oil over the medium term. By the projections, the non-oil revenue as a percentage of total revenue accounts for 57.22%, 43.53%, 39.50% and 38.23% in the years 2009, 2010, 2011 and 2012 respectively. Essentially, instead of appreciating, non-oil revenue is decreasing over the medium term. This is not a sustainable path for economic growth. These projections are made at a time when developed nations are concentrating on finding alternatives to fossil fuel.

C. Reduced Capital Expenditure: The reduced capital expenditure projections from N1,022.26 billion in 2009 to N860 million in 2010 calls for concern. The reduction of capital expenditure as a percentage of total expenditure from 32.96% in 2009 to 27.54% in 2010, 27.36% in 2011 and 27.21% in 2012 does not match the stated desire of government for rapid transformation of the economy. Despite this unwarranted reduction, considering the poor absorptive capacity of MDAs, the capital votes may not be fully expended – spending has averaged less than 60% of the capital budget over the last 3 years. Essentially, the implication of the foregoing is that improvements in infrastructure promised under the 7-Point Agenda, Vision 2020 and the Millennium Development Goals ("MDGs") may not materialize. The National Economic Empowerment and Development Strategy ("NEEDS") reforms had articulated the ratio of recurrent to capital spending to be 60%-40% from the year 2007 and onwards. Apparently the MTEF estimates are retrogressive.

D. Tension Between Monetary And Fiscal Policy: The tension between monetary and fiscal policy whereby a 20% depreciation of the value of the naira will lead to improved fiscal deficit as a proportion of Gross Domestic Product ("GDP"). Under the current projection of oil benchmark price of $50, it will reduce the deficits to -2.55% of GDP in 2010 while a 20% appreciation of the naira will increase the fiscal deficit to -4.01% of the GDP. Ideally, Nigeria should strive to improve the value of its currency from its current value. The above trend analysis may tempt the government to further devalue the naira to achieve fiscal objectives which may end up enhancing inflation.

Further to the last paragraph, the insistence of the authorities to maintain the naira USD exchange rate at N147 to 1USD instead of working to revert to previous rates of N117 and N125 respectively used for the budgets of 2008 and 2009 appears not in the best interest of the nation.

E. Economic Growth: The Government's Vision 20:2020 targets a minimum growth rate of 13% per annum to achieve the vision of Nigeria joining the 20 most developed countries by the year 2020. However, the reality of the MTEF is different from the outcome of the visioning process with projected economic growth figures of 2.68% in 2009, 2.61% in 2010, 4.89% in 2011 and 5.83% in 2012. This is a decline from the average economic growth figure of 6.7% between 2004 and 2008. Thus, there is no connection between the vision and the real world of Nigeria. Further, there is no mention of fiscal policy framework to encourage investments in the sectors where the nation has comparative advantage.

F. Fiscal Strategy And The Economic Objectives Of Government: Section 16 of the 1999 Constitution is on the economic objectives of the state. It provides as follows:

> **16**.- (1) *The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution-*
>
> *(a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self reliant economy;*
>
> *(b) control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;*
>
> *(c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage or operate the major sectors of the economy;*
>
> *(d) without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.*
>
> *(2) The State shall direct its policies towards ensuring -*
>
> *(a) the promotion of a planned and balanced economic development;*
>
> *(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;*
>
> *(c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and*
>
> *(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, unemployment and sick benefits and welfare of the disabled are provided for all citizens.*

The provision in the MTEF 2010-2012 which seeks to explain how the financial objectives, strategic economic, social and developmental priorities and fiscal measures of the Federal Government relate to the economic objectives in section 16 of the Constitution (as demanded by section 11 (3) (b) (iv) of the Act) did not explain how the Federal Government intends to meet its minimum core obligations on the economic and social rights of the people. It states inter alia[10]:

> *The fiscal policies outlined in this paper should over the medium term, ameliorate the negative impact of the global recession on Nigeria's economy and ensure positive rates of economic growth. The Fiscal Policies of Government also prioritise and increase spending*

[10] Chapter 6 at page 37 of the MTEF.

in line with the development priorities of this Administration as encapsulated in the 7-Point Agenda, the Millennium Development Goals and the Vision 20:2020 national planning framework. Specifically, the rolling Medium Term Sector Strategies, which underpin the expenditure framework and the annual budgets, have been conceived against the backdrop of these high level policy documents. This spending should reduce poverty....

But when this statement is juxtaposed with the indicative capital expenditure ceilings, a different picture emerges. The envelopes for education and health as shown in Table 1 compared to previous years speak for themselves.

Table 1: Indicative Envelopes for Education and Health 2010-2012 MTEF Compared to Previous Envelopes

MDA	2008 Budget in =N=bns Capital including MDGs	2009 Budget in =N=bns Capital including MDGs	2010 Budget in =N=bns Capital including MDGs	2011 Budget in =N=bns Capital including MDGs	2012 Budget in =N=bns Capital including MDGs
Education	50.5	40	39.6	34.2	37.1
Health	54.5	50.8	37.9	29.8	32.3

Considering the poor outcomes in education and health under the current capital investment structure, declining capital investments is not the best way to maintain existing poor standards. It will also not propel the system to higher standards. At this rate of investment, Nigeria will neither meet the targets of the MDGs, Vision 20:2020 or the demands of Chapter 2 of the Constitution.

Chapter Two

THE 2010 APPROPRIATION BILL

2.1. GENERAL OVERVIEW

The 2010 Appropriation Bill is stated to be a fiscal stimulus budget that seeks to regenerate the economy, focus on government's 7 Point Agenda, the Millennium Development Goals (MDGs) and improve the standard of living of the people[11]. The Appropriation Bill is based on the following macroeconomic assumptions: oil production capacity of about 2.088mbpd; oil price benchmark of US$57/barrel; Joint Venture Cash (JVC) call of US$5billion; average exchange rate of N150 to the US dollar; target inflation rate of 11.2% and targeted real Gross Domestic Product (GDP) growth rate of 6.1%. The projected expenditure is N4,079 trillion expected from the following major sources: Opening or Unspent Balance brought forward from 2009 fiscal year (N300 billion); 48.5% FGN Share of Federation Account (1,831.08 billion); 14% FGN Share of Value Added Tax (70.51 billion); and Estimated FGN's Balance of Special Accounts as at December 2009 (15.48 billion) Naira respectively. A deficit of N1,562.60 trillion is proposed. The N4,079 trillion is to be disbursed as follows: Statutory Transfers (180.28 billion); MDAs Recurrent Non-Debt Expenditure (1,361.7 billion); Capital Expenditure (1,370.82 billion); Debt Service (517.1 billion); and Consolidated Revenue Fund Charges (649.8 billion) respectively. In overall terms, the proposed expenditure represents a 31.5% increase over 2009 estimates. This is more accurately reflected in Table 2.

Table 2: Detailed Revenue and Expenditure Profile - 2008-2010 FGN Budget (Nominal Naira)

Review of the 2008-2010 Federal Government Approved Revenue Estimates (Nominal Naira Billion)*			
Fiscal Year	**2008**	**2009**	**2010**
REVENUE PROFILE	**Approved Estimate**	**Approved Estimate**	**Budget Estimate**
Opening Balance	217.7	300	300
FGN Oil Revenue Share	2,085.4	1,516.5	1,831

[11] Parts 2.1 to 2.5 includes tables and issues from CSJ's Analysis of the 2010 Federal Budget.

Value Added Tax	43.1	77.9	70.51
FGN Independent Sources	237.4	305.9	300
Other Sources**	8.6	64.8	15.5
Total Revenue	**2,592.2**	**2,265.1**	**2,517.1**
Growth in Total Revenue		*-12.62*	*11.13*
EXPENDITURE PROFILE			
Statutory Transfers	162.6	168.6	180.3
Growth in Statutory Transfers		***3.7***	***6.9***
MDAs Re-current Expenditure (Non-Debt)	1,108.9	1,232.6	1,361.7
Growth in MDAs Recurrent Expenditure		***11.2***	***10.5***
Capital Expenditure	785.2	1,022.3	1,370.8
Growth in Capital Expenditure		***30.2***	***34.1***
Domestic Debts	306.2	227.8	478.2
External Debts	66.0	55.8	38.9
Total Debt Service	372.2	283.6	517.1
Growth in Total Debt Service		***-23.8***	***82.3***
Consolidated Revenue Fund Charge (CRFC)***	218.7	394.7	649.8
Growth in CRFC		***80.5***	***64.6***
TOTAL EXPENDITURE	**2,647.60**	**3,101.80**	**4,079.70**
Growth in Total Expenditure		***17.2***	***31.5***

SURPLUS/(DEFICIT)	-55.4	-836.7	-1,562.60
DEFICIT AS % OF REVENUE	***-2.1***	***-36.9***	***-62.1***
DEFICIT AS % OF BUDGET ESTIMATE	***-2.1***	***-27.0***	***-38.3***
Nominal GDP****	24,848.9	27,672.0	32,648.3
DEFICIT AS % OF GDP	***-0.2***	***-3.0***	***-4.8***

** Based on various budget implementation reports. **These include actual balances in sign bonds, special/levies accounts etc*

*.***Excluding debt servicing. **** These figures are drawn from the Revenue Framework of Appropriation Bill.*

2.2. THE BENCHMARK PRICE FOR CRUDE OIL AND PROJECTED PRODUCTION PER DAY

The MTEF projects the benchmark price of crude oil in 2010 at $50 per barrel at a ten year moving average. However, the Appropriation projects a benchmark price of $57 per barrel. This is an inconsistency between the MTEF and the budget proposal. Whatever happened between the period of the MTEF formulation and the budget documentation is unexplained in the budget. The budget is supposed to be framed based on the predetermined Reference Commodity Price ("RCP") and Tax Revenue[12]. According to the MTEF, $57.20 per barrel is the estimated market price of crude oil in 2010. Using the actual market price as the budget projection creates some inconsistency and may lead to little or no accruals to the Excess Crude Account ("ECA"). The ECA has played a great role in providing stability for the budgets of the three tiers of government. Funds in the ECA were estimated at $20 billion at the exit of the Obasanjo administration. It has been drawn down to about $6 billion as at the end of 2009. Considering the fast rate of diminishing the ECA at about $4.66 billion per year, the three tiers of government may have nothing to fall back upon in the event of price volatility and oil shock leading to diminished prices. There may be the need for some sober reflection on the actual RCP to be used for the budget. This may lead to a lowering of the RCP.

The predetermined RCP is tied to the number of barrels to be produced per day. Thus, for the estimation of aggregate revenues, the number of barrels has to be realistic and

[12] Section 11 (3) (c) of the FRA.

attainable. The projection of oil production capacity at 2.088 million barrels per day appears realistic considering the prevailing social and political climate in the Niger Delta. Previous forecasts in 2008 and 2009 were not realized mainly due to the civil unrests, production shut down and activities of militants in the Niger Delta. However with the laying down of arms by militants under the Amnesty Programme of the Federal Government, there is every hope that if the reconciliation roadmap is meticulously followed, the projection will be realized and may be exceeded.

2.3. THE QUANTUM OF EXPENDITURE AND THE RESULTING DEFICIT

For total projected aggregate expenditure of N4,079.7 trillion and a budget deficit of -N1,562.6 trillion which represents a Deficit/GDP ratio of approximately – 4.8%, exceeds the -3.28% Deficit/GDP proposed in the MTEF 2010-2012. It also exceeds the 3% Deficit/GDP ratio stipulated in section 12 (1) of the FRA.). Section 12 (1) of the Fiscal Responsibility Act ("FRA") explicitly states that:

> "*the estimates of aggregate expenditure and the aggregate amount appropriated by the National Assembly for each financial year shall not be more than the estimated aggregate revenue plus a deficit, not exceeding three percent of the Estimated Gross Domestic Product or any sustainable percentage as may be determined by the National Assembly for each financial year"*.

This is not a good measure of fiscal prudence and does not augur well for predictability of funding. Although fiscal deficits may be premised on the need for substantial interventions in essential services to maintain aggregate demand, promote economic growth and reduce poverty, this should be balanced against the hazards of unsustainable government expenditure. Considering the fact that deficits of the same magnitude are expected in 2011 (3.10% of the GDP) and 2012 (2.90% of the GDP), this means a straight period of four years of deficits (2008-2012). The fact that the projection for 2010 has been exceeded may also lead to exceeding the projections in outer years considering that 2011 is an election year when politicians will propose to invest huge resources to show the electorate their interest in improving their welfare. Persistent deficit budgeting will at some time in the future become unsustainable and the tendency towards a realistic, affordable and consistent resource envelope is negated.

However, the three percent rule may be exceeded if in the opinion of the President:

> *there is a clear and present threat to national security or sovereignty of the Federal Republic of Nigeria*[13].

The President has not informed Nigerians of any clear and present threat, neither has a state of emergency been declared. It is also imperative to consider the quantum of

[13] Section 12 (2) of the FRA.

resources that have been budgeted in previous years and the value derived from the expenditure of the resources. It could be argued that Nigeria's underdevelopment merits being labeled an emergency situation. However, it has not been officially so labeled. Although Nigeria lags behind comparator countries in services and infrastructure such as electricity, good roads, railways, education and health, the problem has not been strictly one on the quantum of resources invested. Rather, it is on the value derived from such investments and the prioritization among expenditure heads. Thus, misallocation, mismanagement and outright embezzlement of resources have contributed in no small measure to the underdevelopment of Nigeria. These deficits may make a little more sense and may have beneficial impact on overall GDP by the time we root out corruption from our PEM process.

The revelation by the Minister of State for Finance, Remi Babalola that all tiers of government received their highest allocation in a decade (since 1999) in the year 2009[14] is a demonstration of the fact that large budgets do not necessarily yield optimum results. Nothing has changed in terms of the infrastructure deficit, neither has there been increased human capital spending by the three tiers of government.

2.4. DEFICIT FINANCING AND BORROWING

The proposal to finance the huge budget deficit of over -1,562.6 trillion mainly from borrowing is unhealthy especially with the new game plan of switching from external to internal debts. It appears that after exiting indebtedness to international agencies, the country is steadily increasing its domestic indebtedness. From a total provision for debt repayment of N283.65 billion in 2009 to N517.07 in 2010, an increase of about 82% may not be sustainable in the medium and long terms. The debt financing expenditure is about one eight of the entire budget and by the time the new debts anticipated by the 2010 budget are incurred, the 2011 budget will definitely need a higher percentage of the budget to service debts. With total indebtedness of about $26b, Nigeria appears to be back on its way to unsustainable debt overhang. Section 41 of the FRA clearly states that:

> *Governments at all tiers shall only borrow for capital expenditure and human development, provided that such borrowing shall be on concessional terms with low interest rate and with a reasonably long period of amortization….*

Although the FRA allows the government to raise bonds, raising bonds at double digit or close to double digit interest rates cannot in any way be described as concessional borrowing. The budget proposal does not explicitly state the terms or conditions on which domestic borrowing is to be contracted to finance the huge budget deficit.

[14] Remi Babalola stated as follows: "*All levels of government –Federal, State and Local - actually got much more allocation than what they budgeted for in 2009"* in the Nation Newspaper of February 2010.

Floating of domestic bonds may be an attractive source of deficit financing. However, it should be noted that it may have the effect of increasing interest rates thereby 'crowding out' private sector investment as well as leading to a 'debt over-hang' situation as experienced in the recent past.

With the expected revenue of N2,517.06 trillion, the deficit of 1,562.6 trillion and a capital budget of 1,370.82, the proposal to finance the deficit from proceeds derived from the sales and privatizing of public properties (7.5%) means that part of the proceeds will be used to finance recurrent expenditure. This also clearly contravenes section 53 of the FRA:

> *The proceeds derived from the sale or transfers of public properties and the rights over public assets shall not be used to finance recurrent and debt expenditure, provided that such proceeds may be used to liquidate existing liabilities directly charged against such properties or assets.*

Table 3: Sources of Deficit Financing in Nominal Naira Billions (2008-2010)

Sources of Deficit Financing in Nominal Naira Billions (2008-2010)						
Detail	**Est. 2008**	**Actual 2008**	**Est. 2009**	**Actual 2009****	**Est. 2010**	**% of Deficit Covered by Each Source**
Total Deficit	**-55.4**	**-133.2**	**-836.7**	**-994.1**	**-1,562.60**	
Deficit/GDP Ratio	-0.2	-0.5	-3.0	-3.6	-4.8	
Financing Sources						
Domestic Borrowing	155.5	155.5	524.1	263	867.5	55.5
Sales of Gov't Property	50	0	0	0	9.6	0.6
Privatization Proceeds	50	0	100	0	107.2	6.9
Signature Bonus	32.7	190.5	125	0	150	9.6
International Bonds ($500m)	0	0	62.5	0	75	4.8
FGN share of ECA of 2010	0	0	0	0	309.1	19.8
Other Internal Sources*	23.5	485.1	0	0	44.2	2.8
Total	**311.7**	**831.1**	**811.6**	**263**	**1562.6**	100.0
Financing Surplus/Deficit	***256.3***	***697.9***	***-25.1***	***-731.1***	***0***	

** Excluding opening balance. These figures are based on 2009 2nd quarter budget implementation report.*

The planned borrowing from External and Domestic sources by the Federal Government during fiscal 2010 is as follows: External Sources – **3,048.56 million USD** (to be disbursed over a 5 – year period); Domestic Sources – **N867,480.00 million.** The borrowing programme of the Federal Government in 2010 is further defined as follows:

Table 4: Borrowing Programme of the Federal Government for Fiscal Year 2010[15]

A. **External Sources***

Source	Amount in million USD
IDB	78.00
IDB (Islamic Solidarity Fund)	240.00
IDA (World Bank)	806.86
ADF (ADB)	281.00
IFAD	42.70
China Exim Bank	1,500.00
India Exim Bank	100.00
Total	**3,048.56**

*Disbursements envisaged over a 5-year period

B. **Domestic Sources**

Source	Amount in million N
Bonds & Nigeria Treasury Bills	867,480.00
Total	**867,480**

With 60.3% of the deficit financing attributable to local borrowing and international bonds, it will make eminent sense if the bonds and borrowing to be raised are revenue bonds whose repayments are tied to the stream of income from specific capital investments rather than the general Consolidated Revenue Fund of the Federal Government. This should apply to capital projects which will likely be privatized or concessioned to the private sector after completion. It makes no sense to burden the Treasury with repayment of such borrowed money. Greater accountability and value for money would be derived if the bulk of these bonds are revenue bonds that tie repayments to the income derived from the projects executed by the loans. Through this process, both the Federal Government and the lenders would ensure that a good cost benefit analysis and project review is done and lenders would have faith in the proposed project before subscribing to the bonds. Separating debt repayment from the faith in the project, its income streams and general viability and tying it to allocations from Nigeria's

[15] Taken from "Documents Accompanying the 2010 Budget to the National Assembly".

petro naira encourages reckless borrowing and lending. Non income earning projects should be financed through appropriating already available resources.

By section 44 (1) of the FRA:

> *Any Government in the Federation or its agencies and corporations desirous of borrowing shall, specify the purpose for which the borrowing is intended and present a cost-benefit analysis, detailing the economic and social benefits of the purpose to which the intended borrowing is to be applied".*

"Cost-benefit-analysis" is defined to mean an analysis that compares the cost of undertaking a service, project or programme with the benefits that citizens are likely to derive from it. Stating in the 2010 Appropriation Bill that part of the budget revenue (N867.5 billion from domestic borrowing and N75 billion from international bonds respectively) would be sourced from borrowing without specifying which activities and projects the borrowing would be applied to does not satisfy the provisions of section 44 (1) of the FRA. This is because it is a general statement of intent to borrow which does not specify the purpose of borrowing. Funding the deficit is not a specific service, project or programme. The President has not presented cost benefit analysis for the approval of the Legislature. Essentially, the Legislature should insist on the detailing of the specific projects and their respective cost benefit analysis by the President for the approval of the Legislature.

Furthermore, judging from previous years forecast of financing sources and the actual amount realized from these sources (Table 3), the Analysis is pessimistic that the proposed deficit may actually be financed from these proposed sources. For example, in fiscal years 2008 and 2009, no amount was actually realized from the sale or transfers of public properties. Essentially, the Federal Government has sold off all its choice properties, assets and companies and nothing substantial will come from sale or transfer of public properties.

2.5. DEBT REPAYMENT

The Appropriation Bill dedicates over one eight of the budget to debt servicing - N517.1 billion in a budget of N4,079 trillion. When the debt repayment figure is considered against the background of the actual revenue (forecast revenue before borrowing to finance the deficit) of N2,517.1 trillion, it implies that about one fifth of actual revenue is used for debt servicing. Against the deficit of N1,562.60 billion, debt repayment is about one third of the deficit. This is not sustainable in the long run. By the end of 2010, when these new debts proposed in the Appropriation have been incurred, the percentage of the 2011 budget going to debt servicing will definitely increase. This development coming shortly after the proverbial debt relief is no good news. The growth in domestic debts from over 11.6% in 2009 to over 19.0% in the 2010 Appropriation is highly unrealistic and unhealthy for economic growth. As earlier mentioned, it may increase interest rates thereby, “crowding out” private sector investments which is a key growth driver. The situation is made worse by the lack of transparent criteria and clear set fiscal targets on which these loans and issuance of guarantees are done. It is important for the Legislature to mandate the Debt Management Office (DMO) to clearly present and report what the government expects to spend on debt servicing, amortization, interests falling due and other records so that the Legislature can have an idea of its debt obligations in the next 3 to 4 years. The dynamics of the rising domestic debts profile and costs to the government of servicing such debts should also be analyzed and properly reported in the budget as prescribed by international best practices on debt management.

2.6. THE QUANTUM OF EXPENDITURE AND MTEF AGGREGATES

The increased expenditure for 2010 also meant non compliance with MTEF aggregates projected for the year 2010 which is the first year of the rolling plan. This is as shown in Table 5. This is not in tandem with the need for predictability of expenditure and proper planning.

Table 5: MTEF Aggregates and the 2010 Projections[16]

	Statutory Transfers (billion naira)	Total Debt Service (billion naira)	Capital Expenditure (billion naira)	Recurrent (Non Debt) Expenditure (billion naira)
MTEF	148.26b	297.78	860.00	1,816.31
2010 Appropriation	180,279	517,071	1,1370,819	1,361.7

If the percentage deviation had been minimal, this could be justifiable. But a situation where the average deviation is about 40% raises a red flag. It is either the MTEF as stated in the FRA guides federal budgeting or the Federal Government reverts to its yearly budget process without earlier projections and forecasts of revenue and expenditure.

2.7. OPENING BALANCE/RETURN OF UNEXPENDED CAPITAL VOTES FOR 2009

With a provision for capital votes in the sum of N1,022.3billion in the 2009 Appropriation Act and the disclosure by the Minister of Finance Mansur Mukhtar, that less than 60% of the capital budget was spent, the Treasury should be expecting not less than N450 billion as against the N300 billion stated in the Appropriation Bill. It will also be pertinent for the Legislature to enquire into the expenditure of the overhead votes of the MDAs. This may reveal more funds to be paid back to the Treasury.

[16] Figures taken from page 44 of the Fiscal Strategy Paper and juxtaposed with 2010 Appropriation figures.

2.8. CAPITAL EXPENDITURE[17]

The proposal to raise capital estimates from about N1,022.26 trillion in 2009 to N1,370. 82 trillion in the 2010 Appropriation is commendable especially when this increase cuts across key sectors such as agriculture, health, education, power, works and housing etc. However, it is important to draw the attention of the Legislature to the fact that these increases in real terms have no significant impact on the budget of these sectors when compared to year 2009's estimates. For instance, that of agriculture fell short of last year projections by over -5.0%, health (-1.3%), education (0%), works, housing and urban development (-4.3%) and environment (-0.3%) etc. If we are anticipating a real GDP growth rate of 6.1% as articulated in the budget with sectoral expectations of 38% from agriculture, manufacturing 3%, wholesale and retails (14%) etc., then the relatively low capital estimates of these key sectors cannot drive the expected increases. These are real growth drivers which must be properly funded to re-position the economy as one of the top 20 largest economies in the world. Currently, keeping the capital estimates at 33.6% of the entire budget is far below NEEDS 1 requirement of 40% necessary to maintain sustained broad-based growth. As a minimum, it would be important for capital estimates to be raised to the 40% benchmark.

The greatest challenge to the realization of budgetary objectives is the year after year failure to implement the capital budget to a reasonable extent and the return of such monies to the Treasury. The 2009 capital budget implementation was under 60% and increase of the capital vote means more jobs for a bureaucracy with low absorptive capacity.

Provisions for the Ministry of Works, Housing and Urban Development have no plans for the housing sector despite it being a Ministry for Works, ***Housing*** and Urban Development. With the exception of the sum of N280 million for the provision of infrastructure in Public Private Partnerships in the National Sites and Service Scheme (page 456 of the proposals), nothing was said of the housing sector. The evidence is glaring that Nigeria is suffering from severe housing crisis and the Federal Mortgage Bank is under-capitalised. A fiscal stimulus budget would have done well to stimulate the housing construction industry so as to provide jobs, generate aggregate demand for building materials and provide homes to satisfy the rights of the people to adequate housing. The budget would also need to infuse funds and new policy directions into the National Housing Fund.

2.9. GROWTH PROJECTIONS

For the realization of the economic objectives of the Constitution as demanded by the FRA, the budget must support economic growth and development. The MTEF 2010-

[17] A good part of this section is taken from CSJ's Analysis of the 21010 Federal Appropriation Bill.

2012 had projected a real GDP growth of 2.61% for the year 2010. With little or nothing changing in the economic indicators and variables, the budget proposal simply inserted a figure of 6.1% GDP growth. The major changes in the MTEF document and the budget is the slight increase in the benchmark price of oil from $50 to $57, the extension of the deficit from -3.28% of the GDP to -4.8% of the GDP. The example of agriculture and its relationship to the attainment of the earlier projected growth of 2.61% will demonstrate how realistic current growth projections are. The 2010-2012 MTEF projected a sectoral contribution of agriculture to real GDP of about 37.9% in 2010 and also proposes 8.3% of the total capital budget to agriculture and water resources since it appears to be a major source for the diversification of the economy away from oil and gas. Beyond the foregoing, agriculture is also a major plank for actualising the right to freedom from hunger. Surprisingly, the total federal budget allocations to the sector is only 4.40% (representing a -1.9% decrease from last year estimates). Also the capital budget allocation decreased from 13.6% of the capital budget to 8.5%. It would be important as a minimum to raise the budget to at least last year's level of 6.30% of the total budget. With the diminished funding of sectors that are supposed to drive the 2.61% growth, increasing the growth forecasts to 6.1% apparently is an exercise in futility. The Legislature is therefore enjoined to review this optimistic projection considering the improbability of realizing such growth. Alternatively, more budgetary investments should be channeled to growth drivers.

2.10. OTHER DEVELOPMENT TARGETS IN THE FISCAL TARGET APPENDIX

Section 19 (e) of the FRA provides that the Appropriation Bill shall be accompanied by:

> *A Fiscal Target Appendix derived from the underlying macroeconomic framework setting out the following targets for the financial year-*
>
> *(i) target inflation rate,*
> *(ii) target fiscal account balances,*
> *(iii) any other <u>development target</u> deemed appropriate.(underlining supplied for emphasis)*

The Appropriation Bill is accompanied by target inflation rate for the years 2010-2012 and target fiscal balances for the same period. However, under "other development targets", it provides figures for the GDP growth rate and exchange rate. But a clear reading of the subsection indicates that the FRA did not just intend that the Minister of Finance should repeat the fiscal targets of GDP and exchange rate which were already mentioned in other sections of the MTEF. The words used are "development target" which is different from mere fiscal targets and balances. Considering that the human person is the central subject of development which is a composite phenomenon that practically impacts on human dignity and the enjoyment of basic existential rights by all segments of the population[18], involving the full emancipation of the human personality, the Legislature intended other targets to focus on such developmental issues such as targets on the Millennium Development Goals, the rights to adequate housing, social security, employment figures, the best attainable state of physical and mental health and the right to education. A more progressive provision found in the sub-national Bayelsa State Fiscal Responsibility Law 2009 in section 20 (1) (e) clearly requires the annual budget to be accompanied by:

> *(i) targets for economic growth*
>
> *(ii) target fiscal account balances*
>
> *(iii) target employment rate*
>
> *(iv) targets for the realization of the rights to education, health, adequate housing and to sustainable improvements in the standard of living..*.

Considering that the FRA is anchored on the implementation of the economic objectives of governance found in section 16 of the Constitution which provides inter alia that:

> *(2) The State shall direct its policies towards ensuring -*
>
> > *(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, unemployment and sick benefits and welfare of the disabled are provided for all citizens.*

The provisions of the Fiscal Target Appendix therefore failed to meet the developmental objectives of the FRA and the Directive Principles of State Policy found in section 16 of the Constitution.

2.11. MEASURES ON COST CONTROL

Section 19 (d) of the FRA requires the Appropriation Bill to be accompanied by measures on cost, cost control and evaluation of results of programmes financed with budgetary resources. The “Documents Accompanying the 2010 Budget to the National Assembly” makes provisions for cost control. The first point to note is the need to link cost cutting measures with measures to curb corruption which eats deep into budgeted sums. Presently, there is no such link in the 2010 proposals. The cost cutting measures will be reproduced in italics (quotations also in italics) with comments in normal print as follows:

Procurement and Maintenance: *Direct procurement of technical items, and items of specialized nature should be ordered directly from their manufacturers to maintain standard*

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[18] See the Declaration on the Right to Development adopted by United Nations General Assembly resolution 41/128 of 4 December 1986.

and save cost. In addition, such procurements should have warrantee[19] and maintenance clauses.

It appears that this measure is contrary to procurement procedures stated in the Public Procurement Act 2007 ("PPA"). It intends to amend the provisions of the PPA on the procurement of technical items and items of a technical nature. It is doubtful if a mere document accompanying the Appropriation Bill could amend an Act of Parliament. Under section 42 of the PPA, direct procurement can only be carried out where:

> *(a) goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exist; or*
>
> *(b) there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procuring entity;*
>
> *(c) owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods;*
>
> *(d) a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that;*
>
>> *(i) additional supplies need to be procured from that supplier or contractor because of standardization,*
>>
>> *(ii) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity;*
>>
>> *(iii) the limited size of the proposed procurement in relation to the original procurement provides justification,*
>>
>> *(iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision.*
>
> *(e) the procuring entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or*
>
> *(f) the procuring entity applies this Act for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement.*

[19] The issue of warranty is already provided for in section 16 (28) of the PPA.

(2) The procuring entity:

(a) may procure the goods works or services by inviting a proposal or price quotation from a single supplier or contractor;

(b) shall include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source procurement.

The cost control measures are not on all fours with the provisions of the PPA on direct procurement.

Procurement of Vehicles: *Expenditure on the procurement of vehicles has been deferred. Provision for security vehicles and other specialized automobiles for specific agencies of government are pooled into the Service Wide votes.*

Construction of New Office Buildings: *Similarly, expenditure relating to the construction, purchase or acquisition of new office buildings has been deferred.*

Provision for Furnishing and Equipment of Non-Priority Offices: *Expenditure on furniture and equipment for non-priority office buildings has also been deferred.*

The last two measures would have made eminent sense if it they were anchored on sound principles and applicable across the board to all MDAs and public offices. Some offices are highly in need of proper accommodation and an office complex. The ready example is the office of the Auditor General for the Federation which has been deliberately starved of a decent accommodation by the Federal Government. Whilst the office cannot aspire to own its accommodation, the Appropriation Bill provides the sum of N250m and N750m allocated for the renovation/furnishing of the houses of the Senate President and his deputy and the purchase of guest houses for Senate's presiding officers respectively. Other offices such as the Accountant General are housed in magnificent princely buildings. If the budget intends to cut costs, it should be based on sound principles applicable across the board. No definition is offered as to what constitutes priority offices.

Insurance Premium: *Provisions for group life insurance, building insurance and vehicles insurance in the Budget of MDAs are to be centralized for monitoring and cost efficiency.*

International Travel and Transport: *The provision under the International Travel and Transport item of expenditure is to remain at the 2009 level.*

The 2009 level which is to guide the 2010 Appropriation is outrageous. Travels, whether local or international, should not constitute a huge bulk of the recurrent expenditure. Some examples from the budget of the Legislature will demonstrate how realistic the levels are. In 2010, the House of Representatives is budgeting N22.8 billion for Travel and Transport (General) out of which N4.74 billion is for international travels and a further N776.250 million for Travel and Transport (Training) out of which international transport will gulp N379.5 million. The Senate has N5.063 billion for Travel and Transport (General) out of which international travel will gulp N2.458 billion and a further N640 million for Travel and Transport (Training) out of which international travel will gulp N260 million. This excludes the aggregate Travel and Transport of over N745 million of the National Assembly Office and the sum of N379 million for the National Assembly Service Commission. The proposal to use N23.4 billion for the purchase of presidential aircrafts also fits into this "cost saving structure". This does not appear to be a good way to cut costs.

Local Management Training and Capacity Building: *Notwithstanding the restrictions on non-technical international management training, MDAs may continue to meet their manpower training and capacity building requirements by patronizing local management training programmes, or bringing in foreign experts to conduct the training, where necessary. In this regard, government is to restructure the training institutes like the Centre for Management Development, ASCON, and PSI to meet the training needs of public servants.*

Agencies and Parastatals not Funded by the Budget: *The above mentioned measures will continue to apply with equal force to all Parastatals and Agencies of Government that are not funded by the Treasury.*

2.12. EVALUATION OF RESULTS OF PROGRAMMES FINANCED WITH BUDGETARY RESOURCES

By section 19 (d) of the FRA, beyond the provision on measures on cost control, demands an evaluation of results of programmes financed with budgetary resources. The word evaluation is defined to mean to form an opinion of the amount, value or quality of something after thinking about it carefully[20]- some form of assessment. This would essentially involve an analysis of the impact of the programmes on the population or segments of the population targeted by specific programmes. It should deal with such issues as increase in school enrolment and improvements in learning outcomes, greater number of mothers and children reached with maternal and child health services, increased access to immunization, number of new households that have access to portable water, etc. The evaluation of results is not about the fiscal projections in terms of revenue and expenditure projected versus the actual(s) and the reasons for realizing or not realizing the forecasts which the quarterly budget reports are assigned to do. The evaluation should lead us to what has changed positively or negatively through the expenditure of government resources. However, neither Appropriation Bill nor the accompanying documents provided the evaluation of results of programmes financed through budgetary resources as required by section 19 (e).

[20] Oxford Advanced Learners English Dictionary, 6th Edition at page 396.

2.13. JOINT VENTURE CALLS FUNDING GAP ARREARS

Joint Venture Cash Calls funding gap arrears were stated as pre 2008 outstanding incremental funding gap arrears of $2.9billion and 2008 incremental funding gap arrears of $3.83billion. What is not clear is the basis for the computation of these arrears - whether they were pro-rated to the percentage of actual oil production considering the shortfalls in production in the stated years and these figures are apparently based on the budget estimates of those years. The basis of the computation of the 2010 incremental funding gap of $3.505 billion is also not stated.

For corporations such as NNPC, the report of the Auditor General for the Federation for the year 2007 particularly at pages 30 to 32 reveals improper book keeping, collecting monies in excess of need, refusal to pay over earned interests to the Federation Account, collecting barrels of crude oil in excess of refining capacity and improper accounting for the balance, etc. Considering the legislature's powers under section 88 of the 1999 Constitution and the duty under section 48 (2) of the FRA, it is imperative to ensure that the appropriate authorities explain and clarify the basis of the request and refund due monies to the Federation Account.

2.14. THE PETROLEUM SUBSIDY DEBATE

Both the MTEF and the 2010 Appropriation Bill did not explicitly indicate whether the subsidy on petroleum products is to be maintained in the year 2010. The Federal Government has been withdrawing the subsidy from the Distributable Pool Account established under section 162 of the 1999 Constitution as a first line charge on the Federation Account. Apparently this is fundamentally flawed and not supportable by law and jurisprudence considering that the section did not contemplate such expenditure[21]. It is imperative for the Legislature to give clear guidelines on the subsidy. Ideally, the subsidy should be retained. However, if the subsidy is to be removed, this Analysis proposes that the savings from the removal should be channeled by legislation to a specific ring–fenced fund dedicated to the social sector and infrastructure upgrading. Allowing the savings to be dispersed through what apparently is a bottomless pit of Federal and States Consolidated Revenue Funds will expose citizens to the burden of paying more for petroleum products with its multiplier effect on the cost of living without enjoying the benefits of enhanced service delivery through the investment of the saved funds.

2.15. ESTIMATED REVENUE FROM SCHEDULED CORPORATIONS

Table 6 provides the details of the revenue forecast from scheduled corporations.

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[21] See *Attorney General of the Federation v Attorney General of Abia & 35 Ors* (2002) 6 NWLR (Part 764) 542-905.

B.	SUMMARY DIVIDEND, OPERATING SURPLUS BY FGN OWNED PARASTATALS AND COMPANIES APPROVED 2008 - 2009 BUDGET AND 2010 ESTIMATES				
S/No.	MINSTRIES/INTER-MINISTERIAL DEPARTMENTS	APPROVED 2008 ESTIMATES	APPROVED 2009 ESTIMATES	ACTUAL PAYT. JAN-SEPT. 2009	APPROVED 2010 ESTIMATES
1	Central Bank of Nigeria	24,747,670,027.25	50,473,800,000.00		17,168,091,456.90
2	Nigerian Postal Service	98,990,680.11	258,840,000.00		88,041,494.65
3	National Maritime Authourity	3,109,399,098.90	7,560,954,911.91		2,571,773,185.88
4	Nigerian Ports Authourity	2,377,458,787.01	5,781,135,879.23		1,966,387,898.26
5	Nigerian Shippers Council	41,471,194.62	647,100,000.00		220,103,736.63
6	National Sugar Development Council	153,425,340.39	647,100,000.00		220,103,736.63
7	Raw Mat.Research and Devt. Council	41,471,194.62	194,130,000.00		66,031,120.99
8	Nat. Agency for Sci. & Eng.Infrastructure		25,884,000.00		8,804,149.47
9	Federal Airport Authority of Nigeria	38,867,488.74	1,294,200,000.00		440,207,473.25
10	Nigerian Civil Aviation Authority	495,091,353.96	1,553,040,000.00		528,248,967.90
11	Nigerian Airspace Management Agency	100,203,547.98	647,100,000.00		220,103,736.63
12	National Automative Council	79,248,626.23	328,984,345.80		**111,900,299.49**
13	Nigerian Tourism Develop.Corp.	3,164,534,061.72	388,260,000.00		132,062,241.98
14	Nigeria LNG Limited	39,624,313,116.81	51,768,000,000.00		17,608,298,930.15
15	Standard Orgnization of Nigeria	31,093,990.99	258,840,000.00		88,041,494.65
16	Nigerian Television Authority	155,469,954.95	647,100,000.00		220,103,736.63
17	NAFDAC	197,783,378.86	517,680,000.00		176,082,989.30
18	Corporate Affairs Commission	235,003,436.20	1,941,300,000.00		660,311,209.88
19	Nigera Export Import Bank	213,606,049.17	1,553,040,000.00		528,248,967.90
20	Nigeria National Petroleum Corporation		45,234,826,679.55		15,386,114,013.04
21	National Communication Commission	1,426,475,272.21	7,436,215,654.20		2,529,344,540.03
22	Federal Radio Corporation of Nigeria	495,091,353.96	647,100,000.00		220,103,736.63
23	Joint Admission and Matriculation Board	395,566,757.72	2,200,140,000.00		748,352,704.53
24	National Film and Censors Board	47,468,010.93	129,420,000.00		44,020,747.33
25	National Exermination Council	553,793,460.80	2,135,430,000.00		726,342,330.87
26	West African Exermination Council	791,133,515.43	2,329,560,000.00		792,373,451.86
27	Bank of Industry	118,670,027.31	788,036,529.31		268,041,700.97
28	Nigeria Copy Right Commission	158,226,703.09	258,840,000.00		88,041,494.65
29	Securities and Exchange Commission	1,028,473,570.06	2,581,328,000.00		878,009,485.80
30	Nigerian Env. Standard Reg. & Enfor. Agency		647,100,000.00		220,103,736.63
31	Federal Housing Authority		1,035,360,000.00		352,165,978.60
32	Federal Mortgage Bank		1,553,040,000.00		528,248,967.90
33	National Hospital		414,144,000.00		140,866,391.44
34	Nuclear Regulatory Agency		452,970,000.00		154,072,615.64
	SUB-TOTAL (B)	**79,920,000,000.00**	**194,330,000,000.000**	**40,721,038,933.97**	**66,09,148,723.08**

Section 21 (1) of the FRA demands that scheduled corporations prepare three years estimates of revenue and expenditure and submit same to the Minister of Finance. By section 21 (2), the annual budget and projected operating surplus of the corporations is to be submitted to the Finance Minister who shall cause the estimates to be attached to the Appropriation Bill sent to the National Assembly. The projection of the sum of N66,099 billion as summary dividend, operating surplus by Federal Government owned companies in the 2010 Appropriation Bill appears paltry and an underestimation of available revenue. This does not include loans due from corporations to the Federal Government. More resources available from scheduled corporations will facilitate the reduction of the deficit.

It is clear from Table 6 that some companies have been given very low estimates for instance, the Federal Airports Authority of Nigeria which is projected to remit about N440 million earns N40 million a month, to wit, N480 million a year from the Lagos toll gate between the international and the local airports. This excludes the revenue from other toll gates and other sources of revenue from other airports it manages[22]. The monies expected from the Joint Admissions and Matriculation Board, West African Examination Council and the National Examination Council are also underestimated considering the number of candidates that sit for their examinations, the fees they charge candidates sitting for their examinations and the funding they receive from appropriation.

From the 2007 Auditor General's report (P.15), some companies are owing the Treasury outstanding loans totaling N59.542 billion and there is evidence of capacity to repay in most of the companies. Their refusal to pay is therefore not based on incapacity. These loans need to be recovered. Also going through previous audit reports of the Auditor-General for the Federation, there is a strong indication that even though most of the corporations are not funded from the Treasury, sums generated by these corporations and due to the Treasury are not remitted and that many of these companies and corporations spend their resources illegally without authorisation.

Even though last years estimates were not realized, this is not sufficient evidence of the incapacity of the corporations and agencies to raise more resources. Rather, the weak oversight and apparent non enforcement of sanctions in respect of defaulters account for the poor performance. What is required is enhanced legislative and executive oversight to ensure that these sums are remitted as and when due to the Treasury.

[22] Information revealed by the managing director of the Federal Airport Authority of Nigeria at an interactive session conducted by the House of Representatives Finance Committee and Revenue Stakeholders in early February 2010.

Chapter Three

CONCLUSIONS AND RECOMMENDATIONS

3.1. CONCLUSIONS

The 2010 Appropriation Bill attempted to comply with the provisions of the FRA. Under the FRA, the MTEF should provide the anchor for the budget. The MTEF 2010-2012 was prepared, considered and endorsed by the Executive Council of the Federation and approved by the National Assembly although later in time than anticipated by the FRA. The MTEF provided for deficits, focused more on the oil economy, reduced capital expenditure and projected minimal real GDP growth. However, there was a disconnect between the Fiscal Strategy Paper and the economic objectives of government.

The Appropriation Bill was submitted with accompanying documents including the Estimates of Projected Operating Surpluses of FG owned Corporations, Agencies and Public Enterprises, Fiscal Risk Appendix, Measures on Cost Control, Fiscal Target Appendix. It was also accompanied by Revenue Framework detailing Monthly Collection Targets for Oil Revenue based on the Oil Revenue Benchmark and the Borrowing Programme for the Fiscal Year 2010. Although openness and inclusivity in terms of participation in formulation of MTEF has improved, there is still need for improvements in terms of opening the process for stakeholders who have capacity to make inputs to the system.

The 2010 Estimates represent an increase over the 2009 Appropriation by 31.5%. The predetermined Reference Commodity Price is put at $57 which appears to be the projected market price of crude oil in the MTEF. This will lead to lesser resources accruing to the ECA. The target of producing 2.088mbpd is realistic if the Federal Government’s Amnesty Programme is followed through. The deficit is -4.8% of the GDP which is above the approval of the FRA which stipulates 3% of the GDP or any sustainable percentage to be determined by the National Assembly in each financial year or it may be exceeded when there is a clear and present threat to national security. Deficit financing and borrowing may violate the FRA if borrowed sums are used for recurrent expenditure and deficit financing appears to be increasing Nigeria’s indebtedness in geometric proportions. The need for the executive to submit to the

Legislature the cost benefit analysis for individual projects to be financed from borrowing in accordance with the FRA is noted.

The Analysis noted that the quantum of projected 2010 expenditure is far above the MTEF aggregates in all categories - statutory transfer, total debt service, recurrent non debt expenditure and capital expenditure. With less than 60% implementation of the capital vote of 2009 budget, more monies than projected are expected to be returned to the Treasury. The growth projections for 2010 may not be realized unless more funding is channeled to the growth drivers. Beyond the target inflation and fiscal account balances, the budget was not accompanied by any other development target. The target on sustainable improvements to the human person who is the centre of development, in such areas as employment, education and health is completely missing. Some of the measures on cost control appear to violate existing law on public procurement while there is no general link between cost control and anti-corruption campaigns. The restriction of foreign travels to the 2009 level appears to have just scratched the surface as a lot of funds are still channeled to travel and transport.

The 2010 Estimates were not accompanied by the evaluation of results of programmes financed with budgetary resources. This evaluation is supposed to be different from the normal budget implementation reports which focus mainly on fiscal balances, releases, disbursement and not the actual impact and result leading to desired changes in the human condition.

The demand for N3.505 billion as Joint Cash Venture Call Funding Incremental Gap and the statement of arrears for previous years showed the need for a proper audit of the resources invested into the joint ventures and what they have so far yielded. The claim for arrears appears misleading considering that they were not pro-rated to the percentage of actual oil production for the respective years. In terms of the petroleum subsidy debate, the Analysis states that if the subsidy must be removed, the accruing funds should be channeled by legislation to the social and infrastructure sectors. Finally, the Analysis posits that estimated revenues and operating surpluses from scheduled corporations are underestimated. The proper estimation and collection of the revenues and surpluses will facilitate the reduction of the budget deficit.

3.2. RECOMMENDATIONS

The following recommendations flow from the Analysis:

- The preparation of the MTEF should start in April of every year so as to meet the deadline for its consideration and endorsement by the EXCOF before the end of the second quarter in June.

- The MTEF so considered and endorsed by the EXCOF should be forwarded for the National Assembly's approval before the end of July.

- Although the Constitution allows the President to present the Appropriation Bill to the Legislature at any time, best practices indicate that the President should present the budget to the legislature not later than August, four months to the end of the financial year.

- The National Assembly is also enjoined to conclude budget deliberations and passage before the end of the first week in December.

- The consultations leading to the preparation of the MTEF should no longer be perfunctory. Stakeholders should have access to information anchoring the macroeconomic variables and aggregates informing key policy decisions before the consultations.

- The consultations should be open to all stakeholders who have the capacity to make inputs into the process.

- The MTEF should be made to govern the budget.

- The benchmark price of crude oil should not be the same as the actual market price.

- The deficit of -4.8% of the GDP is excessive and should be brought down to 3% of the GDP.

- The geometric increase in local debts and borrowing should be restrained as the current total national indebtedness of $26 billion and new proposals for borrowing will not be sustainable in the medium term.

- Borrowing should be used for human development and capital expenditure, obtained at low interest rates and subject to long periods of amortisation. The idea of borrowing to finance unproductive expenditure should be discarded.

- All projects that will be financed through borrowing must have specific cost benefit analysis to be submitted by the executive for legislative approval.

- Considering that the capital budget of 2009 amounts to N1,022.3 billion and less than 60% was utilised, not less than N450 billion is expected to be returned to the Treasury.

- If a real GDP growth rate of 6.1% or double digit GDP growth and development is be realised, more budgetary investments should be channeled to the growth drivers. The capital vote should be increased to at least 40% of the budget while capacity deficits in MDAs leading to low absorptive capacity in capital budget implementation should be plugged. Sanctions should be considered against ministers and accounting officers who fail, neglect and refuse to implement their capital budgets.

- Future budgets should be accompanied by development targets on the number of expected new jobs, targets for the realization of the rights to education, health, adequate housing and to sustainable improvements in the standard of living to be achieved following the utilization of budgetary resources.

- Measures on cost control should be holistic and effectively cut costs across the board and the highest ranking public officials should lead by good examples to other stakeholders in government. It should also link cost control to anti corruption measures.

- Beyond expenditure figures and outturns, future budgets should contain candid evaluations of results of programmes financed with budgetary resources of the last eighteen months including parts of the outgoing year.

- There should be an upward review of sums due as Treasury revenue from scheduled corporations. This should be accompanied by enhanced oversight of their operations by the legislature and follow up on audit recommendations of the Auditor-General for the Federation.

- If ongoing debates lead to the removal of petroleum subsidy, the executive and the legislature should consider channeling the savings from the removal to a special ring-fenced fund provided by law and dedicated to the social and infrastructure sectors.

- Provisions for Joint Venture Cash Call funding should be thoroughly reviewed by the legislature in view of the disclosures in various audit reports indicating that the public revenue may have suffered an avoidable loss due to the mismanagement of budgeted resources by NNPC and it subsidiaries.