OBEDIENCE IN THE BREACH

(Report on the Implementation of the Fiscal Responsibility Act in the 2009 Financial Year)

CSJ

Centre for Social Justice (CSJ)

(Mainstreaming Social Justice in Public Life)

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ABBREVIATIONS AND ACRONYMS

Act	Fiscal Responsibility Act
AIDS	Acquired Immune Deficiency Syndrome
BOF	Budget Office of the Federation
BPP	Bureau of Public Procurement
CBN	Central Bank of Nigeria
Commission	Fiscal Responsibility Commission
CRF	Consolidated Revenue Fund
CRFC	Consolidated Revenue Fund Charges
CSJ	Centre for Social Justice
CSOs	Civil Society Organisations
DMO	Debt Management Office
DSA	Debt Sustainability Analysis
ECA	Excess Crude Account
ECOWAS	Economic Community of West African States
EFCC	Economic and Financial Crimes Commission
EITI	Extractive Industries Transparency Initiative
EXCOF	Executive Council of the Federation
FAAC	Federation Accounts Allocation Committee
FGN	Federal Government of Nigeria
FODPSP	Fundamental Objectives and Directive Principles of State Policy
FR	Fiscal Responsibility
FRA	Fiscal Responsibility Act
FRC	Fiscal Responsibility Commission
FSP	Fiscal Strategy Paper
GDP	Gross Domestic Product
HIV	Human Immune Virus
HOR	House of Representatives
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communications Technology
ISA	Investments and Securities Act, 2007
JVC	Joint Venture Call
LBO	Legislative Budget Office
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
NBS	National Bureau of Statistics
NEEDS	National Economic Empowerment and Development Strategy
NEITI	Nigerian Extractive Industries Transparency Initiative
NEPAD	New Partnership for Africa’s Development
NERC	Nigeria Electricity Regulatory Commission
NHIS	National Health Insurance Scheme

NLNG	Nigeria Liquefied Natural Gas
NNPC	Nigeria National Petroleum Corporation
NWLR	Nigeria Weekly Law Reports
ODA	Overseas Development Assistance
OPEC	Organisation of Petroleum Exporting Countries
OSSAP	Office of the Senior Special Assistant to the President
PEM	Public Expenditure Management
PPA	Public Procurement Act
RCP	Reference Commodity Price
SEC	Securities and Exchange Commission
SEEDS	State Economic Empowerment and Development Strategy
USD	United States Dollars
VAT	Value Added Tax
WHO	World Health Organisation

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Chapter One

INTRODUCING THE REPORT

1.1 INTRODUCTION

The Fiscal Responsibility Act 2007 (FRA or Act) is a law that seeks to enhance accountability, transparency and value for money in budgeting and fiscal management of federal resources[1] and as such, promote the economic objectives contained in the Fundamental Objectives and Directive Principles of State Policy found in chapter 2 of the Constitution of the Federal Republic of Nigeria 1999 (Constitution). The Constitution by section 6 (6) (c) declares its Chapter 2 as non-justiciable. Thus, the FRA provides an opportunity for the implementation of the economic and social objectives in Chapter 2 of the Constitution[2]. The FRA provides for the establishment of a Fiscal Responsibility Commission (FRC) with representation inter alia from civil society, organized labour, organized private sector and government. The FRC is charged with ensuring the implementation of the provisions of the FRA.

The FRA mandates the Minister of Finance to prepare a Medium Term Expenditure Framework (MTEF) and encourages popular participation in its formulation through public consultations. The MTEF is a three year rolling plan that forms the basis of annual budgets. It contains a Fiscal Strategy Paper (FSP). The FSP includes the strategic economic, social and developmental priorities of the Federal Government for the next three financial years and an explanation of how the financial objectives, strategic economic, social and developmental priorities and fiscal measures relate to the economic objectives set out in section16 of the Constitution. The MTEF also includes a macroeconomic framework, expenditure and revenue framework, consolidated debt statement and a statement on the nature and fiscal significance of contingent liabilities.

The FRA regulates budget execution and achievement of targets, requiring the preparation and publication of the Annual Cash Plan by the Accountant General of the Federation and a Budget Disbursement Schedule by the Minister of Finance. It also regulates official budget monitoring and publication of the results, limitation of deficit financing, debts, indebtedness and borrowing. Under the new dispensation, governments shall only borrow for capital expenditure and human development provided that such borrowing shall be on concessional terms with low interest rates and reasonably long periods of amortization and subject to legislative approval. The FRA further demands that government conducts its fiscal and financial affairs in a transparent manner and accordingly ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures.

[1] It also regulates fiscal matters at the state level on debts and deficit management as these matters are in the federal Exclusive Legislative List.
[2] This is more of an economic and developmental charter of citizens' rights in Nigeria.

A most interesting aspect of the FRA is its recognition of the citizen as a stakeholder in the implementation of the Act. Essentially by section 51, a person shall have legal capacity to enforce the provisions of the Act by obtaining prerogative orders or other remedies at the Federal High Court without having to show any special or particular interest. This provision, a product of civil society advocacy during the consideration of the bill by the legislature has shattered the glass ceiling that hindered public interest litigation in public finance management. Thus, the courts can no longer throw out suits concerning fiscal issues on the ground that the petitioner has failed to show his *locus standi*, or what he has suffered over and above other Nigerian citizens as to justify his maintenance of the action in court.

Nigerian civil society is faced with two options i.e., to act as if the FRA does not exist and ignore its accountability, developmental, popular participation and transparency provisions. The second option is to take action for the implementation of the Act through structured monitoring, advocacy, research and information dissemination for the implementation of the Act. The Fiscal to Social Responsibility Programme of Centre for Social Justice (CSJ) is the anchor for this Report. It seeks to mainstream social responsibility in fiscal responsibility. The Programme has chosen the second option which calls for intervention on behalf of the popular will. Further, the Act is new and is of great importance to the economic and social life of Nigerians beyond the immediate confines of public expenditure management. There is the need for civil society to hold the state accountable for the realization of economic, social and other human rights and fundamental freedoms.

The Programmes' ***goal*** is to contribute to good economic governance through the implementation of the FRA, enhancing transparency, accountability, popular participation and value for money in the federal fiscal system and specifically focusing on the strategic economic, social and developmental priorities of the Federal Government as contained in the MTEF.

1.2 GOAL OF THE REPORT

This Report has as its central goal the monitoring and observation of fiscal responsibility and budgeting practices at the federal level in the year 2009 with a view to strengthening regulatory practices, laws and ensuring that the promises of the FRA are kept by government to Nigerians. It seeks to hold government to account for the implementation of the FRA.

1.3 OBJECTIVES OF THE REPORT

The Report has been designed in such a way that its outcome and recommendations will inform further advocacy for implementation of the FRA and the reform of existing bottlenecks in the system. It is meant to inform the executive, legislature, civil society, organized private sector and other stakeholders of the flaws in the current practice. Its findings will also be relevant to the media in its task of informing the populace of what transpired during the year. Specifically, the Report seeks:

- To provide information and data for evidence based advocacy for continued reforms to the budgeting and fiscal responsibility system;
- To determine compliance with the FRA and any regulations made thereunder;
- Evaluate how realistic the FRA is;
- Elevate transparency and accountability in fiscal transactions of government;
- To make recommendations for the full implementation of the FRA.

1.4 EXECUTIVE SUMMARY

Chapter One is the introductory chapter which deals with the background information about the project leading to this Report, its objectives and the wider social and economic context in which it is set.

Chapter Two is about the Fiscal Responsibility Commission and its work. It notes that the Commission has been constituted although it was set up 12 months after the presidential assent to the bill to become law. The representatives of geopolitical zones, labour and organized private sector have been appointed while the civil society seat is vacant following the resignation of the first appointee. The FRC received its first appropriation in the year 2009 and has started activities although on low key considering the teething problems it has to undergo. Serious sensitisation and capacity building is yet to start although a few enforcement actions have been undertaken to ensure the return by scheduled corporations of their operating surplus as required by section 22 of the Act. Work on the enforcement of limitations on consolidated debt of Sub-national governments, a critical aspect of the Commission's mandate is yet to start.

Chapter Three is on transparency, accountability and popular participation. It affirms that despite the provisions of the Act on enhanced fiscal transparency, the prevailing practice is a little openness and major opaque transactions. The Official Secrets Act and the Civil Service Rules which mandate opaque transactions still dominate the official thinking. The implication is that access to fiscal information is still to a large extent restricted. However, the Budget Office of the Federation has been publishing quarterly reports of budget implementation although later than the statutory time limit. For the year 2009, the first, second and third quarter budget implementation reports have been published. The MTEF process needs to be further opened up to enable competent groups to participate in the formulation and review process. The chapter recalls the various legislative committees working on the budgeting system, but notes the need for a more professional and empirical approach in legislative budgeting through the establishment of the Legislative Budget Office. The chapter affirms that civil society organizations have not engaged the fiscal system as much as the leeway provided in section 51 of the FRA. There is the need for more vigorous and proactive engagement of the FRA to ensure that the objectives of the Act are realized.

Chapter Four is on the implementation of the 2009 Budget. A number of core issues were noted starting from the late passage of the budget to the failure to prepare and publish the Annual Cash Plan and the Budget Disbursement Schedule. Weak capital budget implementation was the norm through out the four quarters of 2009 and according to official statistics, less than 60% capital budget implementation was attained. However, the recurrent expenditure was fully drawn down while the revenue assumptions and forecasts for the budget were not realised. But decreased revenue inflow is not a tenable excuse for the poor implementation of the budget since the government dipped hands into the Excess Crude Account to augment the projected revenue shortfall.

The exchange rate forecast missed the target and the official inflation results indicate that the budget was close to achieving the projected single digit inflation. But this view ran contrary to the lived experiences of the majority of the population. Attacks on oil installations in the Niger Delta still hunted availability of resources for the budget as militants attacked ceaseless for the first half of the year. Within the year, requests by the executive and approvals of virements by the legislature did not follow due process. The virements were not within heads of expenditure to which the sums have been appropriated. Echoes of misappropriation of funds continued within the year - the Siemens and Halliburton scandals refused to be swept under the carpet despite the neglect and failure of the Attorney General of the Federation to prosecute offenders, the Rural Electrification Agency Scam and the mischievous duty waivers of the Obasanjo era all came to the fore. In celebrating ten years of democracy, the House of Representatives was profligate in its spending of the sum of N100 million. The year witnessed the depletion of the $20 billion Excess Crude Account to under $6.2 billion.

Chapter Five is on the FRA and the economic and social sectors. It reviewed the education and health sector appropriations and provisions made for them in the MTEF. The investments showed that 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. The chapter reviewed sectoral allocations in the 2010 budget to agriculture, education, heath, and environment and called for more funding to the sectors. It also recommended the sources for increased funding of these sectors and realignment of funds.

The review of Nigeria’s performance in the MDGs showed that Nigeria will miss most of the goals and targets. It appears that the major challenge bedevilling the realisation of the economic and social objectives of the Constitution and indeed the MDGs is the absence of an entitlement mechanism that defines the rights and duties of the relevant stakeholders - the government as a primary duty holder and the benefiting citizens. Further, monitoring service delivery in terms of the actual services delivered to the people has been replaced by the sheer volume of contracts awarded, new structures built and general expenditure patterns that fail to measure value for money.

Chapter Six reviews the national and Sub-national debt situations and analysed the Debt Sustainability Analysis prepared in 2009 by the Debt Management Office. The DMO used three scenarios i.e, the Baseline Scenario, the Country Specific Optimistic Scenario and the Country Specific Pessimistic Scenario. The DMO's general conclusion is that our national debts are sustainable subject to caveats that we do not over borrow. Generally, it appears that after the exit from the Paris and London Club of Creditors, Nigeria has been speedily building up her domestic debts and slowly but steadily once again increasing external debts. The total external debt stock by economic sector as December 31 2009 is USD 3,947.30 million while the total domestic debt portfolio stood at N3,228.03 billion. Essentially, Nigeria's total indebtedness (external and domestic) stands at over $26 billion as at the end of December 2009

The provision in the 2010 Appropriation Bill of the sum of N517 billion for debt repayment shows that Nigeria is back on an unsustainable debt trajectory. This provision is far higher than the combined provisions for education (N249,086,254,059) and health (N161,845,511,090) by about N106 billion. Also the cost of servicing external debts which has averaged 6% is very high in consideration of the fact that these are concessional debts with actually no interest rates but service charges which generally do not exceed 1-2%. Servicing an external debt of about $3.9 billion with N38.92 billion does not show the loan to be concessionary.

There is also evidence that the Federal Government has been borrowing without due process - without prior legislative approval and submission of cost benefit analysis by the executive to the legislature for approval. This is contrary to the provisions of the FRA. There is also evidence of continued non concessional borrowing by sub-national governments against the spirit and letter of the FRA. Sub-national governments' external debts appear to be sustainable. However, their local debts from banks and bonds from the capital market call for caution. Most of the loans are in contravention of the Guidelines for Sub-national Borrowing developed by the DMO as some states are using close to 50% of their monthly income for debt servicing.

Chapter Seven is on the MTEF 2010-2012 which anchors the 2010 Federal Appropriation Bill. By the FRA, the MTEF is the basis of the annual budget. The timing of the MTEF was late while its preparatory process was not accommodating to all who could make a contribution. Specific issues in the MTEF were analysed including proposals for a deficit in excess of the 3% of the GDP rule in the FRA, the over reliance on oil and proposals for reduced capital expenditure, tension between monetary and fiscal policy and the economic growth forecasts.

Chapter Eight is on the 2010 Appropriation Bill. 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. 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 target 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 major issues discussed by the chapter include the quantum of expenditure and the resulting deficit, deficit financing and borrowing, debt management, the quantum of expenditure and MTEF aggregates, opening balance and return of unexpended balances to the Treasury, capital expenditure and growth drivers. Other issues reviewed by the chapter include other development targets in the Fiscal Target Appendix, measures on cost control, evaluation of results of programmes financed by budgetary resources, joint venture cash calls, the petroleum subsidy debate, and estimated revenue from scheduled corporations, etc.

Chapter Nine is on specific issues of interest. These include the limitation on the utilization of the proceeds of the sale of public assets, the case of the Nigeria Deposit Insurance Corporation and the remittance of 80% operating surplus to the Treasury, clarity of roles and responsibilities in budgeting, the constitutionality of the Excess Crude Account. Other issues include the challenge of a budget calendar, other related legislation such as the PPA, and the fact that states are still dragging their feet on enactment of the FRA.

Chapter Ten is on conclusions and recommendations. The recommendations are to the FRC, the President, MOF and BOF, the Legislature, Attorney-General of the Federation, Debt Management Office and Civil Society.

Chapter Two

THE FISCAL RESPONSIBILITY COMMISSION AND ITS WORK

2.1 CONSTITUTION OF THE COMMISSION

It took the President, Umaru Musa Yar'Adua 12 months after the enactment of the FRA, specifically in late July 2008 to send a list of the members of the Fiscal Responsibility Commission to the Senate for screening and confirmation. The FRC was established in section 1 of the Act with a clear mandate in section 3 as follows:

- *monitor and enforce the provisions of this Act and by so doing, promote the economic objectives contained in section 16 of the Constitution;*
- *disseminate such standard practices including international good practice that will result in greater efficiency in the allocation and management of public expenditure, revenue collection, debt control and transparency in fiscal matters;*
- *undertake fiscal and financial studies, analysis and diagnosis and disseminate the result to the general public;*
- *make rules for carrying out its functions under this Act; and*
- *perform other functions consistent with the promotion of the objectives of this Act*.

Despite signing the Act into law in July 2007, the President did not set up and inaugurate the FRC until late December 2008. And the Commission did not start work until the end of the first quarter of 2009 after the enactment of the Appropriation Act and the release of the first tranche of funds. Up till date, there is no civil society representative on the Commission as the first appointee resigned from the Commission[3]. The members representing organized labour and private sector (and civil society when appointed) are on part time basis while the chairman and members representing geopolitical zones are on full time basis. Thus, while the qualifications and integrity of the current full time members are not in doubt, their appointments were influenced more by politics than by other considerations. They are geopolitical representatives. Also, the lack of a definition for the term "appropriate qualifications" used in section 5 (2) of the Act in reference to the qualification of members of the Commission in the interpretative section 56 is a gross omission.

Further, the alternative voices from labour, civil society and private sector are made to serve on a part time basis. It is very easy to restrict the participation of part time members of the Commission either inadvertently or through deliberate acts. The fact of their absence at meetings, generally in law, would not vitiate the results of any

[3] The first appointee was Debo Adesina who is the editor of the Guardian Newspaper.

proceedings. Essentially, it means that the roles of these aforementioned groups in the FRC may be tokenistic or peripheral. But the argument against making them full time members is that they would easily become part of the system and forget the position of the constituencies they represent.

It appears the late constitution of the Commission was due to the lack of political will to fully implement the Act on the part of the President. It was on the prompting of a suit at the Federal High Court and pressure from the legislature that the President constituted the Commission[4]. Stakeholders interviewed were of the opinion that if the provisions of the Act are fully implemented under the leadership of the Commission, it would block the leaking pipes of fiscal corruption and enhance faith of Nigerians in their government. Unfortunately, most of the Ministers, Assistants and Advisers to the former President Obasanjo (with the exception of Mansur Muktar, the current Minister of Finance who was then in charge of the DMO) who mid-wifed the FRA did not come back to the cabinet and as such, it appears that the champions of the reform process are no longer in charge of advising the President on fiscal proceedings.

2.2 BUDGETARY APPROPRIATION FOR THE FRC

The FRC had its first appropriation in the 2009 Appropriation Act which did not come into force until March 10, 2009. The implication of the foregoing is that the Commission did not start work until April 2009 and the Commission is still saddled with teething problems such as hiring of staff and setting up structures and processes for meaningful operation. The Commission had to move from its first office of a few rooms to its current office space. However, staff recruitments were still ongoing as at the end of the year 2009. The appropriation of the sum of N742m in the 2009 Budget[5] in the first year of operation of such an important Commission smacks of a non recognition of the needs of the FRC. A new Commission with a meager capital budget of N100m is obviously not the best way to kick-start their oversight and regulatory functions.

2.3 SENSITISATION AND CAPACITY BUILDING

The Commission has established a website for information dissemination - www.frc-nigeria.org. It has published the FRA in a booklet. However, no quarterly or periodic publications have been published. No fiscal and financial studies have so far been undertaken as the Commission is setting the ground rules to embark on such studies. However, recently the Commission was reported to have met with MDAs and scheduled corporations in order to ensure compliance by MDAs with the provisions of the Act particularly in the preparation of annual reports, budgets, MTEFs and the return of 80% of the operating surplus to the Consolidated Revenue Fund. At the interactive sessions, the Commission expressed dissatisfaction with the submission of most agencies. It noted that the level of awareness among MDAs, of the provisions of the Act is low[6].

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[4] Following CSJ's intervention in July 2008 in Suit No FHC/ABJ/CS/383/08 between *Centre for Social Justice and Anor v The President of the Federal Republic and 2 Ors*, the President sent a list of members of the Commission to the Senate for their approval.

[5] See the Details of the 2009 Budget prepared by the National Assembly, March 2009.

[6] Compass Newspaper, September 21 at page 23; Leadership Newspaper, September 18 at page 33.

A sister agency like the Bureau of Public Procurement provides a lead in sensitization and capacity building for MDAs under its oversight. A website, various publications, sensitization seminars, capacity building workshops, road shows and events are all strategies that it had used to popularize the Public Procurement Act.

Voices from the Field, particularly MDA personnel, verify this assertion of a low awareness and sensitisation on the provisions of the Act. Capacity building for MDAs for the implementation of the Act is necessary. Although a few workshops have been organized for civil society on the provisions of the Act by NGOs such as the Centre for Social Justice, massive awareness raising needed to generate a critical mass and street army of fiscal enthusiasts is yet to be undertaken. Even among legal practitioners who should be aware of the law, the provisions are yet to become common knowledge. A suit instituted by a legal practitioner against the Imo State Government in respect of its bond offer referred to the Constitution and other laws without any reference in the questions for determination to the provisions of the FRA which should have been central to the suit[7].

2.4 BORROWING AND THE FRC

For the purpose of enforcing the limits on the consolidated debts of federal, state and local governments, the FRC is mandated as follows in section 42 of the Act:

> *(3) For the purpose of verifying compliance with the limits specified pursuant to this section, the Commission shall, at the end of each quarter, determine the amount of the consolidated debt of each tier of government.*
>
> *(4) The Commission shall publish, on a quarterly basis, a list of the Governments in the Federation that have exceeded the limits of consolidated debt, indicating the amount by which the limit was exceeded.*
>
> *(5) Where at the end of any quarter, the consolidated debt of the Federal, State or Local Governments exceeds the respective limits; it shall be brought within the limit not later than the end of the three subsequent quarters with a minimum of 25 percent reduction in the first quarter.*
>
> *(6) Violators of the limits specified pursuant to this section shall-*
>
> *(a) be prohibited from borrowing from internal or external sources, except for the refinancing of existing debts; and*
>
> *(b) bring the debt within the established limit by restricting funding commitments accordingly.*
>
> *(7) Where non-compliance with the limit specified pursuant to this section persists after the time limited by subsection (5) of this section, the affected Government*

[7] See page 18 of the Guardian newspaper of September 22 2009 under the heading “Ohakim, Imo House of Assembly tasked over 2009 Bond Law”.

shall also be prohibited from receiving grants from any other Government in the Federation.

However, the FRC is yet to take any public steps towards the fulfillment of this mandate. Voices from the Field indicate that the FRC is constrained by lack of data on sub-national debts - a fact that the DMO has acknowledged. DMO's Debt Sustainability Analysis Report 2009 states as follows[8]:

> *For completeness, the DMO appreciates the imperative for conducting a DSA for the sub-national entities. However, the dearth of domestic debt data at the State level is currently posing a serious challenge for this exercise. In order to address this challenge, the DMO has put in place various initiatives to assist the States come up with a reliable domestic debt data. These include the establishment of States' Debt Management Departments (DMDs) and providing them with technical assistance on capacity building. In addition, the CBN is currently conducting a survey to collate domestic debt data for the States, including their exposures to Nigerian banks, while there is also an ongoing collaborative initiative between the National Planning Commission (NPC) and the National Bureau of Statistics (NBS), to assist the States determine their individual GDPs.*
>
> *It is expected that by the time all these initiatives are concluded, we would be in a position to have a reliable States' debt data that would enable the DSA to be conducted by each State.*

Within this period, many states have been borrowing from financial institutions and raising bonds from the capital market. States such as Imo and Lagos have raised bonds whilst Benue, Ogun, Bayelsa, etc, are all warming up for the bonds market. The way forward is for the FRC to use its powers under section 2 of the Act to (*compel any person or government institution to disclose information relating to public revenues and expenditure)* demand information on sub-national debts from the states and local governments. It need not wait for the completion of the procedures outlined above by the DMO in the DSA. The FRC can get information from banks and other financial institutions and regulatory agencies such as the Central Bank of Nigeria[9] and the Securities and Exchange Commission[10] on the domestic debt obligations of sub-national entities. Failure to disclose the debt data by any of the tiers of government may lead to barring from internal and external borrowing under section 42 (6) of the Act.

[8] DSA Report at page 26.

[9] The CBN is in a position to demand information from banks and other financial institutions on their exposures and lending to sub-national governments. Failure to disclose will attract requisite sanctions. Indeed by middle of 2009, the CBN had set a ceiling of not more than ten percent of the total credit portfolio of a bank on public sector credits, both on and off balance sheet.

[10] No sub-national government can raise bonds from the capital market without the knowledge and approval of the Securities and Exchange Commission - see section 224 of the Investment and Securities Act 2007. Also information can be sourced from the office of the Accountant General for the Federation where bonds have been raised and Irrevocable Standing Payment Orders have been issued by the State Accountant General for deductions at source from the statutory allocation due to the issuer in the event of default or failure to meet payment obligations - a requirement under section 224 (3) of the ISA, 2007.

Chapter Three

TRANSPARENCY, ACCOUNTABILITY AND POPULAR PARTICIPATION PROVISIONS

3.1 A LITTLE OF OPENNESS, MAJOR OPAQUE TRANSACTIONS

The Act envisages a regime of increased transparency and accountability in the conduct of government's fiscal and financial affairs. Specifically section 48 states as follows:

(1) The Federal Government shall ensure that its fiscal and financial affairs are conducted in a transparent manner and accordingly ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances.

(2) The National Assembly shall ensure transparency during the preparation and discussion of the Medium-Term Expenditure Framework, Annual Budget and the Appropriation Bill.

However, a good part of the fiscal and financial activities of the Federal Government are still shrouded in secrecy. The Federal Government's Public Service Rules ("Rules") 2008 in Rule 020209 provides that it is the duty of every accounting officer to ensure that officers in his ministry or extra ministerial department sign an oath of secrecy on Security Form 1 and that the oaths so signed are carefully preserved. Again in Rule 030415, this duty is reaffirmed. In accordance with the Official Secrets Act and Rule 030416, every officer is subject to the Official Secrets Act and is prohibited at the pain of punishment from disclosing to any person, except in accordance with official routine or with the special permission of government, any article, note, documents or information entrusted to him or her in confidence by any person holding office under any government in the Federal Republic of Nigeria or which he has obtained in the course of his official duties and he shall exercise due care and diligence to prevent the knowledge of any person against the interest of the government. Further, by Rule 030417, every officer is prohibited from abstracting or copying official minutes, records or other documents except in accordance with official routine or with the special permission of his accounting officer. Civil servants are more at home with the Rules and tend to follow it than any other law or subsidiary legislation.

The implication of the foregoing is that every request for information or documentation (whether classified or unclassified including published gazettes, books, journals, reports, etc) by a non civil servant from any staff in an MDA is usually to be put in writing and the request addressed to the accounting officer who is the sole authority to approve or reject the application. This is a laborious process and most at times, there are no replies to such requests. Admitted that there may be need to classify some official information, but this should not pertain to the routine fiscal matters of government.

With the exception of the budget implementation report for the first, second and third quarters of 2009, no other budget implementation report has been published since the coming into force of the Act. No reports were published for the six quarters of the years 2007 and 2008[11]. They were not published within 30 days after the end of the respective quarters as stipulated by the Act. However, only the first quarter report is available on the website of the BOF[12]. The Act was emphatic in its section 30 that:

> *(1) The Minister of Finance, through the Budget Office of the Federation, shall monitor and evaluate the implementation of the Annual Budget, assess the attainment of fiscal targets and report thereon on a quarterly basis to the Fiscal Responsibility Commission and the Joint Finance Committee of the National Assembly.*
>
> *(2) The Minister of Finance shall, cause the report prepared pursuant to subsection (1) of this section to be published in the mass and electronic media and on Ministry of Finance website, not later than 30 days after the end of each quarter.*

But full year budget implementation reports were published for the years 2004 and 2005 by the previous Obasanjo administration. The reasons for the failure to continue the full year publications and the timely quarterly reports is based on two factors vis, lack of political will and capacity constraints. Even when the reports are prepared, they are not published and made available to the public through hard copies that can be purchased or uploaded on the website of the BOF or MOF[13]. There is no political will to open up the fiscal process. The fact that the President sent an amendment bill to the National Assembly in a sister legislation - the Public Procurement Act 2007 seeking to remove civil society, the media and Nigerian Society of Engineers from the policy making National Council on Public Procurement shows the mindset of the authorities. The fact that civil society currently has no representative on the Commission and the constitution of the Commission in late December 2008 further buttresses this point.

Voices from the Field in the MDAs indicate that the capacity to generate the mass of statistics and data required to publish quarterly reports may be lacking in MDAs. When capacity constraints in MDAs combines with the lack of political will in the BOF, the resulting reluctance to implement the Act cystallises.

The response of MDAs to harmless requests for fiscal information calls to question the basis of the enactment of the Act. CSJ and other agencies sent various letters and followed up with visits to several government agencies to get access to basic fiscal information. The Revenue Mobilisation and Fiscal Allocation Commission refused to give out copies of its reports that reviewed the salaries of elected officials despite their media briefing where snippets of their decision were communicated to the public. CSJ's letter of 27th July 2009, duly acknowledged, received no response after several follow up visits. Attempts by our programme officer, PEM to convince the officer in charge at RMFAC to give CSJ a copy were met with threats to throw him out of the premises for

[11] The last two quarters of 2007 and the four quarters of 2008.
[12] www.budgetoffice.gov.ng
[13] The 2008 Budget Implementation report is a good example.

constituting a security threat. Researchers for this Report could not lay hands on any published gazette containing the MTEFs approved in the year 2007 and the reviewed 2008 edition. Despite our letter of August 13 2009 to the Director General of the Budget Office of the Federation and followed up by several visits, requests for copies of MTEFs used between the years 2006 to 2008 were not honoured. The only major information available on the website of the Budget Office of the Federation and Ministry of Finance is the Fiscal Strategy Paper. Available information indicates that contrary to section 15 of the Act, the Ministry of Finance did not publish the MTEFs in a gazette.

3.2 EXCEPTIONS TO THE RULE

It was only the Debt Management Office that responded to our letters related to their role under section 44 (5) of the Act which states that:

> *Without prejudice to the specific responsibilities of the National Assembly and Central Bank of Nigeria, the Debt Management Office shall maintain comprehensive, reliable and current electronic database of internal and external public debts, guaranteeing public access to the information.*

CSJ requested for information on the electronic database of the debt profile of states and local governments which should ordinarily be available on the website of the DMO[14]. DMO replied by their letter of September 16 2009 and informed CSJ that they have uploaded the required information. However, when we checked at their site, the information we needed on the local debt profile was not available. The available information was on the external debt profile of states.

The Budget Office of the Federation published a Citizen's Guide to the 2009 Budget which explained the provisions of the budget and the processes of budgeting at the federal level.

3.3 THE MTEF PROCESS

The Ministry of Finance and the Budget Office of the Federation have been inviting civil society organizations to MTSS sessions of MDAs. However, the criterion used in selecting CSOs participating in the MTSS process appears opaque and unexplained. A number of groups with clear capacity in the budgeting process have been excluded. 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*[15]. CSOs did not also participate in the documentation stage while costing and allocation of envelopes were not done at the strategy sessions[16]. Further, access to timely and relevant information hampered full participation by CSOs. However, Voices from the Field indicate that a lot has improved between the first sessions and current sessions. CSOs as part of the

[14] Letter of September 8 2009
[15] Civil Society Participation in the 2007-2009 Medium Term Sector Strategies, edited by Oji Ogburueke for Action Aid Nigeria, 2006.
[16] Action Aid, supra.

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 getting competent groups to participate 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.

3.4 THE NATIONAL ASSEMBLY AND THE BUDGET PROCESS

The MTEF 2010-2012 is the first to be sent by the executive to the National Assembly. The MTEF was sent to the legislature on October 6 2009, prior to the presentation of Appropriation Bill by the President. But there was no opportunity at the legislative level for the public to make inputs to a vital document that guides the annual budget and the realization of government policies and programmes. It was therefore interesting to note that the National Assembly through the Senate Committee on Appropriations held zonal workshops on *Inclusive Budgeting and the 2010 Budget* between August and September 2009. However, the principal documentation to guide the form and substance of the 2010 budget which is the MTEF 2010-2012 and the Fiscal Strategy Paper were not available to the public and did not guide the discussions. It is the position of this Report that no meaningful popular participation in the budgeting process can be secured without public inputs into the formulation and approval of the MTEF and its components.

The National Assembly has a plethora of Standing Committees. In the House of Representatives for example, there is the Committee on Finance with a mandate covering fiscal matters, monitoring and enforcing the implementation of the FRA. The Aids, Loans and Debt Management Committee oversights internal and external borrowing, policies and laws on the subject including the work of the Debt Management Office which is key to fiscal sustainability. The work of the Appropriations Committee includes oversight of the Budget Office of the Federation, relating the annual budget to rolling plans and MTEF in order to inculcate budget culture and ensure continuity with regards to capital estimates. It also includes providing the House timely, non partisan analysis for economic, budget, policy and legislative decisions. Essentially, the legislature has a lot of Committees whose schedule of duties should provide the opportunity for popular participation in the MTEF and other processes provided by the FRA. For instance, in the consideration and approval of the MTEF and annual budgets, public hearings and memorandum could enrich the process and provide alternative viewpoints.

As in previous years, the National Assembly appeared unprepared for the consideration and passage of the 2010 Appropriation Bill due to lack of information on critical areas of the economy, for instance, the perennial request for joint venture cash calls by the NNPC and the failure of NNPC to provide sufficient information to anchor the huge requests. The information asymmetry between the executive and the legislature is replicated in virtually all sectors of the economy. There is also a critical capacity problem in terms of experts and technocrats who will assist the legislature in the analysis of technical economic and fiscal data. Further, budgeting is an all year affair that is not limited to the approval of Appropriation Bill, hence the need for a permanent Legislative Budget Office ("LBO") modeled after the Congressional Budget Office of the United States.

The LBO will be charged with the duty of assisting the National Assembly develop a plan for the budget through economic forecasts and projections, baseline budget projections, analysis of the President's budget and long term macro-economic policy options. It will also help the National Assembly to stay within its budget plan as it will provide a cost estimate for every gazetted bill for a new law. It is imperative to note that every new law has cost implications for the enforcement and realization of its objects. Sometimes, the costs will cut across board on the federal, state and local governments and even the private sector. A dispassionate analysis of the cost implications at the time of considering the bill will provide greater insight into the trade-offs, financing, etc, that needs to be done for the bill, should it become law.

3.5 CIVIL SOCIETY ORGANISATIONS

CSOs have not taken full advantage of the provisions of the Act to demand for transparency and accountability from the fiscal authorities. Despite the provision of section 51 of the Act granting every person a right of access to the courts, there has been only one reported suit on the FRA while capacity building programmes for full participation in the FRA is a very recent phenomenon. Monitoring the implementation of the MTEF and other provisions of the Act has just started. CSJ has kick-started capacity building and training, publication of a monitoring manual, half yearly reports, newsletters and FRA Fora. As such, the push and kick to engage the state is acquiring a new momentum.

Chapter Four

THE IMPLEMENTATION OF THE 2009 BUDGET

4.1 LATE PASSAGE OF BUDGET

The late presentation of the 2009 Appropriation Bill by the President to the National Assembly resulted in the late passage of same by the National Assembly. The President assented to the budget on March 10 2009. The late start of budget implementation in previous years ultimately manifested as returned moneys to the Treasury at a time the economic life of the country desperately needed massive infusion of resources. This has been the style of the Yar'Adua administration since inception. Late passage of budgets militates against the enhancement of service delivery.

The release of the first Capital Warrant for 2009 based on the amended Budget of 2008[17] would not have been so if the 2009 Budget had been passed and signed into law on time. Although the differences in the amended 2008 budget and the 2009 budget were later harmonized, it makes eminent sense to start the New Year budget implementation on a clean slate. The Financial Year Act clearly provides for the Nigerian financial year to be the period between 1st January and 31st December of every year[18]. It anticipates a new budget to start the financial year and the budget to be fully implemented by the end of the year.

4.2 FAILURE TO PREPARE AND PUBLISH THE ANNUAL CASH PLAN AND THE BUDGET DISBURSEMENT SCHEDULE

The FRA mandates the office of the Accountant General of the Federation to prepare the Annual Cash Plan, to be prepared in advance of the financial year setting out projected monthly cash flows and to be revised periodically to reflect actual cash flows[19]. The Minister of Finance is to prepare the Budget Disbursement Schedule derived from the Annual Cash Plan within 30 days of the enactment of the Appropriation Act[20]. The foregoing documents are public documents that should be available in the spirit of transparency on the website of the Accountant General of the Federation, the Ministry of Finance and Budget Office of the Federation[21]. However, these documents have neither been prepared nor are they publicly available. This is clearly a dereliction of duty in violation of the Act.

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[17] This is based on Federal Financial Regulation No.418.
[18] Financial Year Act, Cap F27, Laws of the Federation of Nigeria, 2004.
[19] Section 25 of the Act
[20] Section 26 of the Act.
[21] See section 48 of the Act

4.3 WEAK CAPITAL BUDGET IMPLEMENTATION

The First Quarter Budget Implementation Report indicates that in the first quarter, the sum of N200.37 billion was released to MDAs for capital expenditure. Out of this sum N160.84 billion was cash backed by the Office of the Accountant General of the Federation. However, only N33.26 billion was accessed and utilised by MDAs which represents 20.68% performance by MDAs in the utilisation of capital votes. This report according to the Budget Office of the Federation was strictly based on response received from MDAs while physical verification and inspection of projects will wait until the end of the year when the budget is fully implemented. The implication of this is that the implementation figures could be much lower because MDAs would likely give higher figures to indicate that they are doing something with the moneys allocated to them.

According to the Second Quarter Budget Implementation Report[22]:

> *The capital budget implementation averaged 42.92% in the first half of 2009 (i.e., N193.08 billion out of N449.88 billion cash-backed by the Office of the Accountant-General). Although lower than expected, this represents a significant improvement over the first quarter performance of about 21%. Of the 44 MDAs assessed, 25 (or 56%) of the MDAs (including Works, Power, Police, Education and Transport) performed below the overall average while 6 (or 14%) of the MDAs performed at an average rate of between 42.92% and 70%. However, 12 of the MDAs (or 27%) utilized over 70% of the capital vote released to them. Of note in this category are the FCTA, Aviation, and the Niger Delta Ministries which improved from below average performance in the first quarter to 70.85%, 77.25% and 100% respectively by the half year. Furthermore, a number of MDAs including Power, Police, Education and Transport whose performance is critical to the achievement of this administration's Seven-Point Agenda have consistently performed below average over the period.*

By the end of the Third Quarter, the Budget Implementation Report stated as follows[23]:

> *Capital budget implementation averaged 44.46% by the end of the third quarter of 2009 indicating a gross utilization of N327.94 billion of the N737.53 billion cash backed by the Office of the Accountant-General of the Federation (OAGF). Though marginally higher than the second quarter's performance, it falls below expectations. Of the 43 MDAs reported on by the OAGF as at the end of the third quarter, 25 (or 58%) of the MDAs (including Power, Education, Health and Works) had utilization rates below the overall average of 44.46%. it is noteworthy that these MDAs which are critical to the achievement of this administration's 7-Point Agenda have consistently performed below average over the period under review.*

Table 1 speaks for itself: **A sample of MDA's Capital Budget Utilization Report as at September 2009 (in N')[24]**

[22] Page vi.
[23] 2009, 3rd Quarter Budget Implementation Report at page vi.
[24] 3rd Quarter Budget Implementation Report at page 19.

MDA	CAPITAL WARRANT RELEASES				PAYMT. THROUGH AIE	TOTAL		%
	1st QTR	2nd QTR	3rd QTR	1st & 2nd WARRANT SHORTFALL		CASHBACKED	UTILIZED	UTILIZATION
Police Formation & Commands	2,801.43	-	5,331.16	7,860.89	-	15,993.47	2,246.89	14.05%
Power	28,324.87	17,051.20	22,178.77	121.78	-	67,036.73	12,721.38	18.98%
Transport	1,526.27	5,643.22	4,429.75	-	13,805.28	25,404.52	11,393.97	44.85%
Health	13,322.95	4,010.04	12,091.85	5,704.39	3,261.73	38,183.21	8,632.35	22.61%
Agric. & Water Resources	20,006.74	19,757.29	34,469.56	23,407.69	-	103,566.29	75,042.76	72.46%
Education	10,799.24	2,871.91	8,390.24	4,945.23	1,999.73	28,675.13	11,544.46	40.26%
FCTA	3,178.63	29,046.37	16,662.50	1,100.00	-	49,987.50	36,820.14	73.66%
Works	28,906.90	101,355.19	52,121.24	1,750.71	-	184,114.04	73,976.99	40.18%
Total average utilization (by all MDAs)								**44.46%**

Budgets are meant inter alia to provide funds for MDAs to carry out capital projects, facilitate the running of their affairs and through these, government policies are transformed into action for the benefit of Nigerians. It is against the principles of social justice and development for funds, approved for projects to be lying idle without any substantial reasons, in the face of infrastructural decay and grave social needs. It is even disheartening to know that the biggest culprits include the Ministries of Education, Health, Power and Works - key ministries that have the greatest impact on human and social indicators, the standard of living and upgrading of infrastructure for economic growth. All the performance indicators in these ministries would qualify them for a declaration of a state of emergency in the sectors. Table 1 indicates that available and budgeted resources have not been deployed for the realization of the economic and social rights of Nigerians.

The Minister of State for Finance on October 24 2009 stated that the $5.3 billion Power Emergency Fund was lying idle at the CBN[25]. This sum was removed from the Excess Crude Account as Power Sector Intervention Fund and each State and the Federal Government was to seek the approval of their legislature for the expenditure of their contribution. He stated that 11 states were delaying the project by not forwarding the approval of their legislature. That Nigeria missed the targeted 6000 megawatts of electricity by the end of December 2009 was therefore no surprise- considering the poor capital budget implementation and the funds that were idle at the CBN.

There is a controversy between the BOF and the Ministry of Finance. While the Minister of Finance states the capital budget implementation figures as at December 31 2009 at 54.26%, the BOF states the figure to be 60.6%. The actual figure is more likely to be lower than the Minister's estimate considering the poor performance of the first, second and third quarter i.e., 20.68%, 42.92% and 44.46% respectively.

The Director-General of the Bureau of Public Procurement, Engineer Emeka Ezeh has proffered reasons informing poor capital budget implementation[26]. He was reported to

[25] Daily Trust, Wednesday October 14, 2009.
[26] This Day Newspaper of February 16 2010 as reported by Kunle Aderinokun.

have attributed it to lack of integrity and transparency in awarding contracts. He alleged that MDAs would normally not award contracts to contractors who are not in their good book, even if the contractor met the necessary qualifications. Demands for gratification are rampant and budgetary requests for money not needed by the MDAs are the order of the day. He concluded that MDAs have the capacity to implement the budget but what they lack is integrity.

Engineer Emeka Ezeh debunked allegations that the Bureau of Public Procurement (BPP) through delays in processing the “No Objection to Contract Award” was responsible for the poor implementation of capital projects. According to him[27]:

> *The BPP certified 566 projects worth N1.94 trillion out of the 602 requests by MDAs in 2009. 36 are still awaiting response while 10 were rejected. It is unfortunate that less than 300 of the 566 contracts certified have been presented to the Federal Executive Council for ratification and award. …Most of the challenges are caused by the contractors who go around and submit fake papers, bribe officials and get politicians to get them pre-qualified. It is a circulated fact that they pay N5 million to get pre-qualification.*

The Director General of the BPP is right in his analysis. The MDAs have been encouraged to enhance capital budget implementation through the fact that the procurement process has been simplified with higher executive approval thresholds and the decentralization of procurements procedures in MDAs.

The Minister of State for the Ministry for Works and Housing added her own perspective that government contracts are concentrated in the hands of a few cronies of those with responsibility to pre-qualify contractors for contracts and it has been observed that these contractors lack the capacity to handle jobs of such magnitude. A contractor with limited equipment may be handling contracts in different parts of the country. There are also cases where genuine contractors who have been pre-qualified are not informed of the certification of such contracts. In such cases, contracts are left unattended to despite the allocation and availability of funds for the project[28].

4.4 FULL UTILISATION OF RECURRENT EXPENDITURE

According to the Third Quarterly Budget Implementation Report, MDAs fully utilised their recurrent expenditure releases as was the case in previous years and quarters.

> *By the end of the third quarter, the Federal Government’s actual non-debt recurrent expenditure amounted to N1,213.39 billion compared to the budgeted estimate of N1,190.23 billion. Consequent on this, the recurrent (non-debt) expenditure exceeded the budget estimate by N23.16 billion or (1.95%). The practice of releasing funds in advance to some agencies of government accounted for this excess[29].*

[27] Business Day, Tuesday February 16, 2010.
[28] Business Day, supra.
[29] Page v under Executive Summary.

However, this raises a series of questions. Beyond personnel costs, should overhead costs be fully utilised in the absence of accompanying capital budget expenditure? What is the link between the capital budget and the overhead vote? It appears that it has become more difficult for MDAs to misappropriate capital funds due to the implementation of the Public Procurement Act while overhead expenditure is still easy to manipulate. Depending on the pattern of the votes, any MDA that fails to access and utilise its capital votes should not be a candidate for drawing down and utilizing all overhead votes. However, the report of the Joint Committee on Appropriation and Finance of the House of Representatives indicates that despite assurances from the executive that the recurrent budget has been released in full, some of the MDAs were not given their correct allocation. The report indicates that some releases to MDAs varied between 19%-50%.

4.5 POOR REVENUE ASSUMPTIONS AND FORECASTS FOR THE 2009 BUDGET

The Federal Government expected the sum of N566.30 billion in the first quarter to fund its budget. The actual revenue realised amounted to N309.05 billion leaving a shortfall of over N257.25 billion. The shortfalls could be attributed to a number of factors including dwindling oil prices and the Niger Delta crisis. Daily oil output was reduced from the target of 2,292mbpd to 2.05mbpd which translates to a 10.56% reduction and Nigeria's OPEC quota was slightly reduced.

However, these are forseable risks and circumstances which should have been taken into account in revenue forecasting[30]. By any stretch of the imagination, this variance is beyond the contemplation of best practices, common sense and reason. It either shows lack of forecasting ability using the right macroeconomic parameters or outright mischief. The fact that N221.43 billion was taken from the N300 billion carryover capital vote of the year 2008 does not make it more palatable.

At the end of the first half of 2009, the Budget Implementation Report stated as follows[31]:

> *Revenue from both oil and non-oil sources were below projections for the first half of 2009. The aggregate revenue available for distribution to the three tiers of government fell short of the projected estimate of N1,791.7 billion by N461.33 billion (or 27.75%). At the Federal Government Budget level, oil revenue underperformed by N94.7 billion (or 19.55%) relative to the projected level of N484.54 billion. Similarly, non oil revenue underperformed by N205.23 billion relative to the projected level of N441.38 billion. The total revenue available for the implementation of the Federal Government Budget (including the budgeted unspent balance of N150 billion for the first half of 2009 from the 2008 financial year), consequently fell short of its budgeted estimate of N1,132.6 billion by N363.43 billion (or 32.09%). This development shows clearly the challenges of implementing the 2009 Budget in the first half of 2009.*

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[30] A human being and indeed nations and institutions are presumed to expect the natural consequences of their actions and omission. By logical extension, until the Niger Delta Crisis is settled, forecasts of the income from oil must factor it into consideration. '

[31] Page v.

The Second Quarter Budget Implementation Report also states further[32]:

> *According to the NNPC's Quarterly Petroleum Information Report, a daily average production of 2.1 mbpd was achieved in the first half of 2009 which is an improvement over the average production of 2.05mbpd in the first quarter of 2009. However, this is below the budget benchmark production target of 2.292mbpd.*

By the end of the third quarter, the Budget Implementation Report stated[33]:

> *The total revenue accruable for distribution among the three tiers of government was projected at N2,687.55 billion for the first 3 quarters of the year. This revenue target was not met as the total revenue available for distribution among the tiers of government over the period was N2,021.48 billion. Aside from revenue from royalties, all other revenue categories fell below budgeted estimates. The aggregate oil revenue (net of costs and derivation) achieved 74.4% of the budgeted estimate of N1,498.56 billion while the aggregate non-oil revenues similarly achieved only 76.19% of the budget estimate of N1,188.99 billion for the same period. The underperformance of both oil and non-oil revenue made financing budgeted expenditure in the Federal Budget a major challenge. In order to maintain essential expenditure, the Federal Government augmented revenue with funding from the unspent balances from the 2008 fiscal year, drawings from the Excess Crude Account, domestic borrowing and concessional loan facilities.*

Decreased revenue inflows to the Federal Government cannot be used as an excuse for poor budget implementation considering that since the beginning of the second quarter, the price of crude oil has been far above the reference commodity price. The report of the Joint Finance and Appropriation Committee of the House of Representatives states that the actual expendable revenue accruing to the Federal Government was N27.98 billion higher than the budgeted figures during the first four months of the year. So who do we believe - the BOF or the Joint Committee?

However, all tiers of government got more allocations than what they budgeted for 2009[34]. Thus, shortfalls in realised revenue cannot be an excuse for low capital budget implementation at the federal level.

4.6 TARGETS ON THE INFLATION AND EXCHANGE RATES

The 2009 budget was predicated on naira value of 1USD = N125 while the exchange rate attained was between 1USD = N147-N150. This actually means more naira for budget implementation - a 20% increase accruable from Nigeria's dollar earnings. The projection for inflation in the 2009 budget was for a single digit rate. However according to the First Quarter Budget Implementation Report[35]:

[32] At page 20.
[33] 3rd Quarter Budget Implementation Report at page 1.
[34] As stated by Remi Babalola, Minister of State for Finance in the Nation Newspaper of February 8 2010.
[35] At page 37.

Based on data from National Bureau of Statistics, headline inflation figures for March show a year on year change of 14.4 percent, core inflation grew year on year by 11.8 percent while food inflation also recorded a 16.2 percent change for the same period. The rise in inflation can largely be attributed to rising food prices as the effects of the global food crisis persists and international food prices, although coming off their recent highs, remain above their average historical levels. In addition, the rise in the price of household goods, stationery, newsprint, education materials and services also contributed to the rise in headline inflation.

From the Second Quarter Budget Implementation Report, it was stated that:[36]

Starting in February, headline inflation began to trend downwards over the course of the first half of 2009. Data for June 2009 shows a year-on-year rate of 11.2% representing a drop of 3.2 percentage points from 14.4% reported at the end of the first quarter of 2009. According to the NBS, the trend in headline inflation year-on-year is largely driven by the food index which peaked at 20% this year in the month of February but slowed to 13.1% by the end of June 2009. Core inflation dropped to single digit levels, slowing down to 8.5% as at June 2009.

By the end of the 3rd Quarter, the Budget Implementation Report indicated that there has been a drop in headline inflation to 10.4% year-on-year driven by a drop in core inflation to 7.4% while food inflation recorded a slight moderation of 12.7% year-on-year[37]. Essentially, if the inflation rate affecting food, household goods and services including education did not meet the single digit projection, the bulk of Nigerians will definitely have been impacted by a double digit inflationary pressure.

4.7 THE NIGER DELTA CRISIS STILL HUNTS THE 2009 BUDGET, FUTURE BUDGETS AND THE MTEF

In late June 2009, it was reported that Nigeria's crude oil production had lost hundreds of thousands of barrels per day due to militant activities in the Niger Delta. This was confirmed by the Group Managing Director of NNPC, Mohamed Sanusi Barkindo. The litany of the attacks in 2009 includes the following:

- January 2: Attack near Obama in the Nembe area of Bayelsa State halts Agip's 12,000bpd;
- January 7: Shells Utorogu-UPS Trunk line;
- January 11: Shell's Amukpe Rapele manifold;
- February 28: Trans Escravos-Forcados manifold;
- May 24: Chevron's Abiteye Pipeline in Delta State;

[36] At page 20.
[37] 3rd Quarter Budget Implementation Report at page 20.

- May 25: Chevron's pipelines to flow stations in Alero Creek, Otunana, Abiteye, Makaraba and Dibi in Delta State;

- June 12: Shell's Trans-Forcados pipeline, Chanomi Creek manifold;

- June13: Chevron's Makaraba-Utonama- Abiteye pipeline and fire at its Makaraba Jacket 5 facility in Delta State;

- June 16: Shell's Trans Ramos pipeline attack in Aghoro 2 community of Bayelsa State;

- June 19: Agip's pipeline between the Ogoda manifold and Brass River terminal in Bayelsa State which halts 33,000 bpd and 2million cubic metres of gas per day;

- June 21: Shell's facilities in Adamakiri and Kula both in Rivers State;

- June 25: Billie/Krakama pipeline in Rivers State;

- June 29: Shell's Estuary Field, near to its Forcados export terminal.

On the complaint of reduced crude oil production due to militancy in the Niger Delta, it was unfortunate that the President Yar'Adua after setting up a Technical Committee on the Niger Delta failed, refused and neglected to consider the Committee's Report or even release a White Paper on it. Yet, this crisis is partly responsible for reduced revenue inflows to fund the budget. The blame for the lethargy in taking proactive action based on the Committee's recommendation is squarely on the door steps of the President. The government's response in offering amnesty to militants begs the posers. The posers are legion; is amnesty a response to the development challenges of the Niger Delta? How do you offer pardon and amnesty to persons who have not been tried and convicted and who under the law are presumed innocent until proved guilty? Will amnesty clean the environment, place food on the table and educate the masses of illiterates in the Delta? However, there appears to be a ray of hope considering that there are presidential initiatives aimed at fast tracking infrastructure development in the region. The challenge is not one of devising new roadmaps and frameworks for the development of the region as there have been a plethora of such plans in the past, the real challenge is the faithful implementation of existing roadmaps and frameworks.

4.8 VIREMENTS

Within the 2009 fiscal year, President Yar'Adua proposed the virement of monies from the budget of education and health in the Federal Capital Territory to the construction of highways and roads - Abuja Airport and Zuba Abuja highways. The construction and expansion of roads is a good investment but it should be done in accordance with the due process of law as stipulated in the Appropriation Act 2009 and the Fiscal Responsibility Act 2007. It should also not be done at the expense of the education and health budgets.

The 2009 Appropriation Act by section 3 states:

> *In the event that a need arises to vire amounts within heads of expenditure to which sums have been appropriated under this Act, such virement shall only be affected with the prior approval of the National Assembly. (underlining supplied for emphasis)*

By section 27 (2) of the FRA:

> *…the Minister may in exceptional circumstances and in the overall public interest, recommend for the approval of the National Assembly virements from sub-heads under heads of account, without exceeding the amount appropriated to such head of account.(underlining supplied for emphasis)*

The underlined words clearly show that virements are only permitted from amounts within heads of expenditure or from subheads under heads of account. A proposal for virement from education and health to roads is not within the contemplation of the foregoing cited laws. It is therefore unlawful and illegal for the legislature to have approved such virement. What was contemplated by the law is movement of funds within subheads of a head of account. Pray, when did road construction become a subhead of account within the accounts of health and education? A budget of about N6 billion is made for roads; increasing it through virement by N25 billion slashed from education, health and others amounts to an amendment of the Appropriation Act. An amendment of the Appropriation Act can only be secured through another Act - not by virement. The approval of the virement is therefore a violation of the law by the National Assembly.

When the intendments of the FRA in the long title and the functions of the Commission are reviewed, the realisation of the economic objectives in section 16 of the Constitution comes out as one of the reasons for enacting the Act. The near catastrophic indicators on education and health (child and maternal mortality and morbidity, poor learning outcomes, etc) calls for enhanced funding and value for budgeted money rather than reductions of already appropriated sums. The posers would be; how did the virement enhance the realization of the objectives of section 16 of the Constitution by providing *suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, unemployment and sick benefits and ensuring that the welfare of the disabled* are provided for all citizens. How did the virement enhance distributive justice?

4.9 MISAPPROPRIATION OF FUNDS

Section 27 of the FRA states that the sums appropriated for a specific purpose shall be used solely for the purpose specified in the Appropriation Act. Contrary to this provision, during the reporting period, there were indications that the sums appropriated for various lawful purposes were misappropriated and mismanaged. These include the following:

- The N5.2 billion Rural Electrification Agency scandal;

- Nigeria Electricity Regulatory Commission scam;
- The resurging Siemens Contract Scandal;
- The resurging Haliburton Contract Scandal;
- The N325 billion Liquefied Natural Gas Funds;
- The N380 billion import waiver scam by the Obasanjo administration;
- N258 billion was reported by the EFCC to have been stolen by political office holders in ten years of civil rule out of which EFCC has recovered about N50 billion.

What baffles most Nigerians is the impunity with which the perpetrators of these scandals operate and are neither (properly) prosecuted nor punished. The Halliburton scandal has been investigated by the Economic and Financial Crimes Commission and the Senate without any action taken as a result of the investigations. Investigations have also been ongoing in the Siemens scandal without any follow up action. In both cases, the Attorney-General of the Federation had shown interest and yet no results have followed such interests. Haliburton had been fined the sum of $382 million by a United States District Court in Houston and the money was forfeited to the United States Treasury while the victims of the scandal (the Federal Government of Nigeria) do not see it as an opportunity to reimburse the Treasury and deter and punish the offenders. Most Nigerians are of the opinion that the Federal Attorney-General intervened to block the prosecution of the offenders and the persons involved in these scandals are sacred cows that cannot be touched by the current administration.

The House of Representatives Committee on Gas Resources had indicated that it discovered the sum of N325 billion which should have accrued to the Federal Government from the investment in the NLNG project deposited in two bank accounts in Chicago, United States[38]. The NLNG and the NNPC claimed that the funds were ploughed back into the expansion of the NLNG on behalf of the government. But elementary constitutional law indicates that such sums due to the Federal Government cannot be ploughed back or spent without appropriation.

The House of Representatives Committee on Customs and Excise revealed through investigations that the Obasanjo administration granted dubious and questionable duty waivers for imports worth N380 billion to cronies who enjoyed unfair advantage over their competitors[39]. This waivers increased imports and facilitated the demise of many struggling local industries producing similar goods. This was a significant loss to the Treasury and it pains more to know that they were for non priority goods and items such as tomato puree, luxury jeeps, office equipment, etc.

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[38] THISDAY of Tuesday, September 1 2009 at page 6.
[39] Daily Independent Newspaper, Tuesday September 29, 2009 at page B4; Editorial.

4.10 CELEBRATING TEN YEARS OF DEMOCRACY- AND THE HOUSE OF REPRESENTATIVES WAS PROFLIGATE

While the Senate called off its celebration of ten years of democracy for which a budget of N159 million had been earmarked citing the mood of Nigerians due to the current financial hardship, the House of Representative still went ahead with its celebrations. The House spent the sum of N160 million. This celebration eventually resulted into a scandal about the management of the finances[40]. Pray, under what budget heading did the legislature approve of such outrageous expense during budget consideration and approval? This brings to the fore the need to define in clear and specific terms the nature of expenditure heads rather than lumping them all together as "miscellaneous" and "other miscellaneous" expenses whose declassification is only known to the beneficiaries of the appropriation.

4.11 PLUGGING LEAKAGES IN THE SYSTEM

The Federal Government during the reporting period acknowledged the existence of leakages in the revenue system and asked for a process audit of the operating surplus of agencies that were required to remit 80% of their surplus to the Treasury under section 22 of the FRA. The audit also included the review of concessions and leases by MDAs especially in the airports, maritime, railways and other sectors to track ulitisation fees received thereon as well as the economic adequacy of the base rate. The audit was also to review the remittances of NNPC and other revenue generating agencies to the Treasury. However, the impact of the action(s) if any, taken as a result of the audit is yet to be felt in the economy. It will be recalled that section 9 of the 2009 Appropriation Act mandated all accounting officers of MDAs to furnish the National Assembly on a quarterly basis with detailed information of their internally generated revenue.

4.12 NON AVAILABILITY OF YEARLY BUDGETARY AND FISCAL REPORTS

By section 49 of the FRA, the Federal Government is to publish its audited accounts not later than six months following the end of the financial year and by section 50, not later than six months after the end of the financial year, the Federal Government is to publish a consolidated budget execution report showing execution against physical and financial targets. This is to be published by the Minister of Finance and submitted to the National Assembly. Obviously, these provisions of the Act have not been complied with, and this is not helping the FRA attain its full potentials for the benefit of Nigerians. It is imperative for the Finance Committees of the Senate and House of Representatives to use their oversight functions to ensure compliance by the Minister with the provisions of these two sections.

[40] See Vanguard Newspaper of June 27, 2009 – the uproar about how the money was spent nearly led to the removal of two principal officers of the House of Representatives from their leadership positions.

4.13 AMENDING THE FINANCIAL YEAR ACT IN DEFAULT

In consideration of the poor implementation of the 2009 capital vote, the Federal Government approved the extension of the implementation of the capital budget to March 2010. This is clearly an extension of the financial year through the back door. Normal government budgets run from January to December as provided in the Financial Year Act[41] which states that the financial year shall run from 1st January and end on 31st December pursuant to section 318 (1) of the 1999 Constitution. Further the 2009 Appropriation Act in section 1 (3) clearly states that no part of the appropriated funds shall be released from the CRF of the Federation after December 31 2009. The Report could not find any amendment of this provision in the Appropriation Act in support of the extension of time. Even if there was such amendment, it still ran contrary to the provisions of the Financial Year Act.

4.14 LENDING TO FOREIGN GOVERNMENTS IN THE FACE OF DOMESTIC ECONOMIC CRISIS

Within the year, President Musa Yar` Adua approved the sum of $30m as loan for Sao Tome & Principe for which $10 million was released with the promise of releasing the remaining $20 million in due course. He also sought the approval of the National Assembly for this enterprise. It is glaring that the country is in a situation of infrastructural decay and economic hardship where some Nigerians can hardly afford a meal in a day. For the President to cough out such enormous amount of money as loan for another country without minding the level of hardship and unemployment in his own country negates the principles of fiscal responsibility. This approval raises more questions than answers: what are the strategic interests that Nigeria needs to protect in that country? How will the loan translate into enhanced economic benefits to Nigerians? It is imperative for Nigeria to mainstream economic diplomacy and promotion of national goals and interests in its relationship with other countries.

4.15 DEPLETION OF EXCESS CRUDE ACCOUNT

Determined to arrest the mischief of the boom burst fiscal cycle, as a spring board for the proper management of oil revenue accruals, the FRA, in Section 35 provides that where the reference commodity price rises above the predetermined level, the resulting excess proceeds accruing to each Government in the Federation shall be saved in a separate account which shall form part of the respective Government's Consolidated Revenue Fund to be maintained at the Central Bank of Nigeria.

To further secure the savings from hasty and unreasonable withdrawals, FRA provides in section 35 (5) (6) and (7) as follows:

> *35(5): No Government in the Federation shall have access to the savings made in pursuance to subsection (2) of this section, unless the reference commodity price falls below the predetermined level for a period of three consecutive months."*

[41] Financial Year Act, Cap F27, Vol.7, Laws of the Federation of Nigeria 2004.

35(6): The augmentation referred to in subsection (5) of this section shall be limited to such sums that will bring the revenue of the Government to the level contained in its budget estimates.

35(7): Notwithstanding the provision of subsection (5) and (6) of this section and subject to agreement by Federal and State Governments in the Federation, a proportion of the savings may be appropriated in the following year for capital projects and programme.

It is on record that the Obasanjo administration had created an Excess Crude Account (ECA) even prior to the enactment of the FRA, and left over USD20 billion in the account by May 2007.[42] The FRA merely gave a legal backing to its existence. However, it has been revealed that the ECA has been depleted to USD6.2 billion in two and half years as at the end of December 2009.[43] As at the end of September 2009, only N72.74 billion had accrued to the ECA from the proceeds of crude oil sales in the year 2009[44]. Although, there have been a few months when oil price fell below the RCP, this is no justification for the undue depletion of the ECA. The violation becomes more revealing when Remi Babalola, the Minister of State for Finance stated:

All levels of Government – Federal, State and Local - actually got much more allocation than what they budgeted for in 2009.[45]

The withdrawals amount to a gang rape of Section 35(6) of the FRA which insists that the augmentation referred to in subsection (5) of this section shall be limited to such sums that will bring the revenue of the Government to the level contained in its budget estimates. More so, there is nothing on ground to practically demonstrate how the withdrawn funds have been applied by the Federal, State And Local Governments to capital projects and programmes as envisaged in section 35 (7) of the FRA. This development is a gross violation of the FRA and impedes the realization of the economic objectives of the constitution.

[42] Remi Babalola, Minister of State for Finance, Nation Newspapers, Monday, February 8, 2010.
[43] Remi Babalola Minister of State for Finance, supra.
[44] Page 12 of the 3rd Quarter Budget Implementation Report.
[45] Remi Babalola, Minister of State for Finance, Supra.

Chapter Five

FRA AND THE ECONOMIC AND SOCIAL SECTORS

5.1 EDUCATION AND HEALTH SECTOR BUDGETS AND THE MTEF

The economic objectives which the FRA seeks to promote[46] are found in the constitutional Fundamental Objectives and Directive Principles of State Policy which are stated by section 6 (6) (c) to be non-justiciable. However, the National Assembly is empowered under item 60 (a) of the Exclusive Legislative List ("ELL") of the Constitution to make laws for the establishment and regulation of authorities for the Federation or any part thereof for the promotion and enforcement of the Fundamental Objectives and Directive Principles of State Policy ("FODPSP"). It has been stated by Supreme Court as follows[47]:

> *The Constitution itself has placed the entire Chapter 2 under the Exclusive Legislative List. By this, it simply means that all Directive Principles need not remain mere or pious declarations. It is for the Executive and the National Assembly, working together to give expression to anyone of them through appropriate enactment as occasion may demand.*

The Court further stated that the meaning of the word "establish" in item 60 of the ELL is clear enough and requires no further elaboration. The Court also construed the expressions "regulate", "promote" and "enforce" to determine their functions in item 60 (a). To regulate means to control, govern and direct the affairs of the authorities set up by the National Assembly to promote and enforce the observance of the FODPSP contained in Chapter 2 of the Constitution. To promote will involve the enactment of such laws and activities as will advance, further and contribute to the enlargement and growth of the FODPSP. To enforce means to execute, make effective and compel obedience to the Fundamental Objectives and Directive Principles[48]. Essentially, by the force of the FRA, the provisions in the economic objectives of the Constitution have derived some measure of enforceability.

How have the FRA reforms impacted on the economic and social sectors particularly on education and health? The preparation of the MTSS/MTEF is hinged on policy objectives contained in high level policy documents of the government and international standards adopted in Nigeria[49]. The Constitution as the supreme law of the land will lead the high level policy documents; the MDGs, NEEDS and the 7- Point Agenda will also come to play. The FSP as part of the MTEF is supposed to contain an explanation

[46] See the long title to the FRA and the functions of the Commission in section 3 of the Act.
[47] Per Uwaifo J.S.C. in *Attorney General Ondo State v Attorney General Federation* (2002) 9 N.W.L.R. (Pt.772) 222 at 391.
[48] See Sasegbon's *Encyclopedia of Nigerian Law and Practice*, First Edition, Vol. 4 Paragraph 185 at page 113.
[49] Article 2 of the International Covenant on Economic, Social and Cultural Rights ratified by Nigeria comes into play.

on 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[50]. The posers are: how far has the FRA process ensured that *suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pension and unemployment, sick benefits and welfare of the disabled are provided for all citizens?* How far has the implementation of the FRA guaranteed that *the material resources of the nation are harnessed and distributed as best as possible to serve the common good and the control of 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?*[51]

There is an interesting bill pending before the National Assembly. It is the Fundamental Objectives and Directive Principles Implementation Bill which will require the President to give a yearly address and account to the legislature on the steps taken by the government to implement the FODPSP. The idea is to focus the attention of the President on the implementation of state aspirations because currently, they appear to be ropes of sand in the mind of the executive. Stakeholders should support the passage of this important Bill which will facilitate the realisation of the objectives of the FRA.

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 is demonstrative of the lip service approach of the Federal Government to meeting the minimum core obligations of the State. It states inter alia:[52]

> *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 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 expenditure ceilings, a different picture emerges. Two key ministries of education and health will be used as examples. The envelopes for education and health as shown in Table 2 compared to previous years speak for themselves.

[50] Section 11 (3) (b) (iv) of the FRA.
[51] See section 16 of the Constitution.
[52] At page 37.

Table 2: Indicative Capital 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.

Article 2 (1) of the international Covenant on Economic, Social and Cultural Rights ratified by Nigeria states that:

> *Each State Party to the Present Covenant undertakes to take steps individually and collectively and through international assistance and cooperation especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means including particularly the adoption of legislative measures*.

Using the federal public spending and situation assessment in two sectors, health and education to assess improvements since the FRA will reveal retrogression. Fiscal prudence is expected to free up resources for investment in these critical sectors. The situation assessment indicates that at the tertiary education level, there has been a harvest of strikes since the FRA. The strikes have also extended to the primary and secondary school levels. As at the end of September 2009, 19 states have their primary schools closed for about a month while the universities were closed for about three months. All the strikes have focused on the remuneration, poor teaching and learning outcomes and conditions of service of staff.

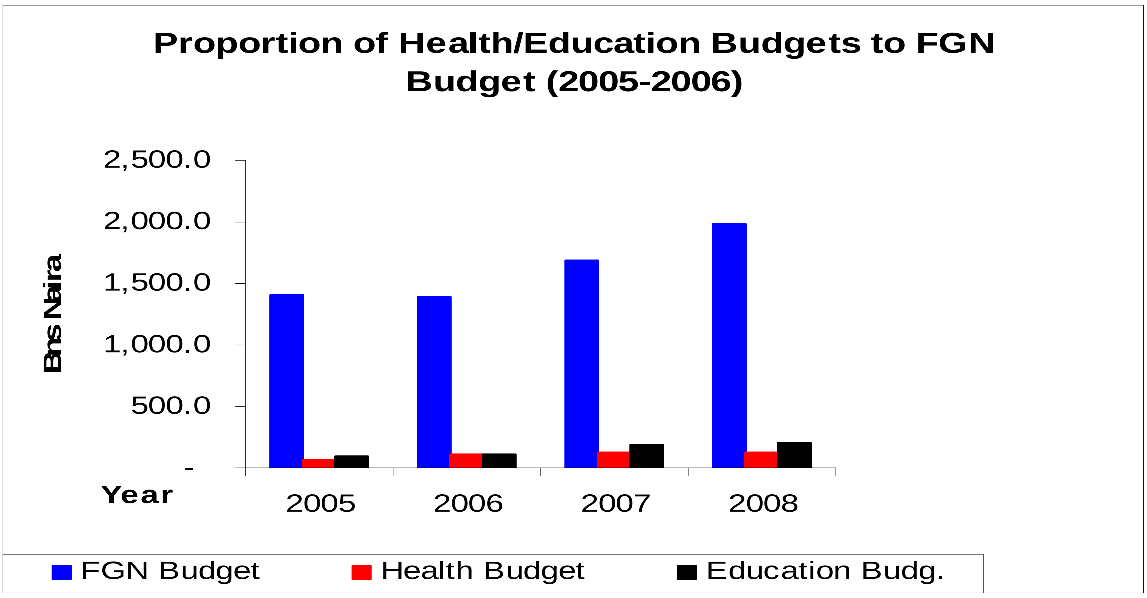
International standards recommend public spending on health and education for countries at Nigeria's stage of development to be 15% and 26% respectively of the entire national budget. The ICESCR also insists on no deliberate steps backward in the realization of the rights to health and education. Table 3 suggests that the averages for a four year period 2005-2008 hardly exceeded 5.3% for health and 8.3% for education respectively.

Table 3: FGN Budget on Health and Education in Nominal Billions Naira (2005 -2008)

Year	2005		2006		2007		2008	
Sector	**Health**	**Educ.**	**Health**	**Educ.**	**Health**	**Educ.**	**Health**	**Educ.**
Budget Est.	**71.6**	**120.0**	**105.6**	**165.1**	**122.4**	**185.8**	**135.5**	**196.0**
Actual	**70.0**	**98.1**	**106.9**	**166.6**	**118.0**	**185.0**	**130.0**	**200.0**
Variance	-1.6	-21.9	1.3	1.5	-4.4	-0.8	-5.5	4.0
% of Budgt. (Est.)	5.0	8.3	6.9	10.8	6.9	10.5	6.1	8.9
% of Budgt. (Act.)	5.0	7.0	7.7	12.0	7.0	10.9	6.5	10.1

Table 3's projections are further illustrated in Figure 1.

Figure 1: Proportion of FGN Health/Education Budgets to the National Budget (2005-2008)



For the year 2009, the following allocations and percentages emerge.

Table 4: Breakdown of Education and Health Ministries Recurrent and Capital Expenditure 2009[53]

Ministry	Approved Estimate 2009	% of Overall Budget
Education	224,676,889,661	8.48%
Health	154,567,493,157	5.83%

The implication of the foregoing Tables and Figure is that Federal Government of Nigeria is not using the maximum of its available resources for the realisation of the

[53] Approved Budget 2009.

rights to health and education as it fails to meet the basic minimum international standards.

5.2 THE 2010 BUDGET PROPOSALS

A. Agriculture And Water Resources: 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 and achieving the ultimate target of food sovereignty. Also, the National Bureau of Statistics stated that agriculture contributed 41.85% to the 2009 GDP of Nigeria. Surprisingly, the total federal budget allocation to the sector is only 4.40% (representing a -1.9% decrease from the 2009 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 the 2009 level of 6.30% of the total budget.

It is very important to draw the attention of the Legislature to the fact that the bulk of agriculture's activities are usually undertaken outside the main ministry and therefore, the allocation of over 73.2% of the entire agricultural budget to the main ministry is very high. The allocation of over N200 million (02500010210000) for the hosting of D8, 2010 Head of Governments and Ministerial Summit and the conduct of agriculture census (200million) (02500010120000) under ongoing projects for the main ministry is too high. We recommend that a little more funds be re-allocated from the main ministry to its sub agencies like National Institute of Freshwater Fish, New Bussa, with a total capital estimate of only N164million; Federal College of Agriculture, Akure, with capital estimate of N81million, Federal College of Fishery and Marine Technology, Lagos, with a total capital estimate of less than N60million, Federal College of Freshwater Fisheries Technology, Baga, with capital estimates of less than N88 million respectively. Allocations in the agriculture sector should be tied to specific improvements in food production, the utilisation of the results of the research institutes for enhanced food processing and preservation, etc.

B. Education: Although the total amount proposed for the Ministry of Education rose slightly from 224.6 billion in 2009 to over 249.1 billion in the 2010 Appropriation Bill, in overall terms; the impact is in the negative direction (-1.1%). This is a retrogressive movement. This proposed allocation only represents 7.4% of the entire federal government budget. This fails to meet the UNESCO conventional benchmark of 26% for developing countries. Given the importance of this sector to human and economic development, it would be important to push the estimates up to the international benchmark requirement.

The funding for library upgrading and technical equipments in Universities and Polytechnics needs to be increased. Our universities are ranked as one of the poorest in terms of learning outcomes. The current levels of investment will only complicate the challenges in the sector. Total allocations of N7.7 billion to the University of Ibadan, N5.7 billion to the University of Lagos, N8.3 billion to the University of Nigeria, Nsukka and N8.8billion to Ahmadu Bello University ridicule the concept of university education. The universities and other tertiary institutions require massive infusions of capital for infrastructure development.

Allocating N1.6 billion to Joint Admission and Matriculation Board (JAMB) (0320602) with over 84.8% of this estimate earmarked for personnel cost, N2.4 billion to the West African Examination Council (WAEC-Local) (0320603) with over 91.2% representing personnel cost, and 3.0 billion to National Examination Council (NECO) (0320607) with also over 83% of this estimate allotted for personnel cost, is disturbing. These observations are worrying when we compare these estimates to that of some tertiary institutions. It is imperative for the Legislature to mandate an urgent personnel audit of these educational bodies.

Furthermore, the attainment of universal basic education by 2015 as described in Goal 2 of the Millennium Development Goals (MDGs) requires that more primary school teachers be trained while at the same time increasing subsidies to this vital sub-sector. The allocation of N5 billion to the UBE Scheme is a welcome development and the federal Government should enhance its policy direction for the entire education sector so as to improve learning outcomes. With over ten million school age children out of school, the case for enhanced funding of the sector speaks for itself. The target should be to make education at all levels available, accessible, affordable, acceptable and adaptable.

C. Health: Health budget as a proportion of the total budget is about 4.8% representing a -1.1% drop over the 2009 estimates. This fails to meet the World Health Organisation (WHO) set benchmark of 15% of the budget. It is important to push the estimates up to the international benchmark. The Mid-Term Report on the MDGs from the Office of Senior Special Assistant to the President on the MDGs states that reducing child mortality and improving maternal health will not be achievable by 2015. Some of the reasons given for this position include poor state of health infrastructure, lack of skilled manpower, unwillingness of health workers to work in rural areas; recent data is hard to come by, etc. The trend in maternal mortality appears to be worsening and the proportion of births attended by skilled health personnel is improving too slowly. This position therefore makes a case for a strong collaboration between the Federal, state and local governments and increased funding and value for money in the sector. Also, given the importance of child immunization programs to the attainment of MDGs, the allocation of only 1.2 billion (4.6%) of the entire ministry budget to this sub-sector is too small. The figure should be increased given the total high fertility rate of about 3% for the country.

The allocation of about 1.167 billion to the National Health Insurance Scheme (NHIS) would have been greatly appreciated. However, the impact of the activities of the NHIS is yet to be felt by the majority of the populace judging from its personnel cost (50%) of the budget and its on-going capital projects such as the outsourcing of actuary (25million) (0036060010040000), production of beneficiaries ID cards (150,000,000)

(0036060010010000). Despite the fact that the NHIS is a contributory scheme, there is the need for its re-evaluation including its budgetary allocation so that it can reach a greater number of people in the rural areas and the informal sector. Greater funding is anticipated and the target should be compulsory universal coverage. This implies that the state would support those who are unable (due to no fault of theirs) to access health care insurance.

Tertiary health institutions - teaching hospitals have moved from being mere consulting clinics to confirming morgues. However, the challenge has always been blamed on the doorsteps of poor funding and this continues to be the case. The example of Lagos University Teaching Hospital with an allocation of N4.195 billion and a wage bill of N3.817 billion tells the story. Thus, what is remaining after salaries and wages have been deducted is under N400m to run such a huge complex. Increased funding to this subsector is imperative.

The target of enhanced policy implementation and funding should be to make health care services available and accessible. Accessibility includes non discrimination and physical accessibility, economic accessibility which is affordability, information accessibility; and of good quality and acceptable to individuals and communities that need health services.

D. Works, Housing And Urban Development: Although Works, Housing and Urban Development ranks highest in the sectoral allocation of the 2010 budget (7.37%), this fell short of 2009 estimates by over -1.7%. The proposal of disbursing over 210 billion of the sector's allocation to so many on-going projects (05100001000000) is quite ambitious. From the Appropriation Bill, it appears that the investments in the sector are so thinly spread. It would have made eminent sense if the investments are concentrated on fewer but achievable projects. The human and material resources needed to implement and supervise the quantum of projects is evidently lacking in the Ministry considering the year after year provisions that make no appreciable impact in the sector. Considering the low capital allocations relative to demand for the services of this Ministry, the development of public private partnership models that will drive investments in this sector by the Infrastructure Regulatory Commission will be a very welcome development. The government should also give urgent attention to the revival of the partnerships between Nigeria and other nations wiling to collaborate with Nigeria for the development of infrastructural facilities across the nation. Enhanced infrastructural facilities will help shore up the contribution of the real sector to GDP growth.

The Ministry's proposals apparently 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 budget 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 not properly 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.

E. Environment: The total allocation of 0.4% of the entire budget to Environment is inadequate to address the current massive environmental problems faced in the country especially on climate change, droughts and desertification, erosion, flood, pollution and environmental impact assessment of development projects. The mere allocation of over 3.9 billion for total capital projects to the sector is grossly inadequate to attain the MDG goal of ensuring environmental sustainability by 2015. This sector's budget should be increased to address urgent environmental problems in the country.

F. Power: The power sector has benefited from generous budgetary allocations since 1999 and the 2010 budget proposal allocates over 11.2% of the total capital estimates to the sector. However increased allocation has not resulted in enhanced service delivery and value for money by the Power Holding Company of Nigeria (PHCN). Further, sector analysis of the effect of power failure on the different sectors in the 2010 appropriation suggest that about 2.2billion would leak out of the total expenditure of the various MDAs to cushion this effect as depicted in Table 5. The summary of Table 5 is that, when we compare the budget estimates of some sectors like the Ministries of Mines and Steel, Aviation, Special Duties, National Salaries, Income and Wage Commission put together, the total amount to be expended on the purchase of plants, generators, maintenance and fuelling in the 2010 appropriation is greater than it.

Table 5: Purchase of Plants/Generators, Maintenance and Fueling 2010 FGN Budget (Nominal Billions)

Detail	Costs	Sector Budget	% of Sector Budget
Presidency	85,865,561	28,754,415,863	0.30
SGF	302,090,000	55,231,191,747	0.55
Youths Development	84,716,250	45,687,479,760	0.19
Police Affairs	39,245,000	2,940,981,749	1.33
Police Command	120,400,000	216,451,359,796	0.06
Women Affairs	2,000,000	2,432,758,588	0.08
Agriculture	23,988,432	148,715,672,952	0.02
Auditor General Office	40,450,000	2,667,293,277	1.52
Independent Corrupt Pract. & Com.	38,500,000	2,325,564,386	1.66
Defence	459,704,767	232,044,871,801	0.20
Education	306,853,162	249,086,254,059	0.12
Health	193,750,000	161,845,511,090	0.12
Foreign Affairs	91,960,000	44,893,151,006	0.20
Finance	263,346,441	13,296,774,087	1.98
Commerce & Industry	39,269,999	11,488,336,964	0.34
Information & Communications	53,631,032	23,533,740,953	0.23

Interior	297,434,276	94,721,278,051	0.31
Head of Service	44,000,000	16,304,621,185	0.27
Justice	22,000,000	16,429,556,157	0.13
Labor and Productivity	8,085,337	6,865,408,654	0.12
Power	1,365,762	156,787,893,849	0.00
Science and Technology	26,000,000	25,625,009,126	0.10
Petroleum Resources	165,709,819	66,004,378,200	0.25
Works, Housing & Urban Dev.	52,923,750	249,425,015,681	0.02
Mines & Steel Dev.	15,009,940	13,245,872,700	0.11
Aviation	2,486,303	55,282,544,568	0.00
Environment	27,705,600	13,579,598,029	0.20
Tourism & Culture	54,400,000	16,826,968,443	0.32
National Planning Commission	59,492,372	7,549,765,313	0.79
National Sports Commission	30,078,999	10,386,034,743	0.29
Niger Delta	95,700,000	64,419,415,401	0.15
Special Duties	1,872,538	303,976,119	0.62
Fiscal Responsibility Commission	15,122,576	1,197,740,873	1.26
Infrastructure Regulatory Commission	6,000,000	1,830,711,774	0.33
Federal Executive Bodies	184,531,780	61,836,986,501	0.30
National Assembly	573,850,000	127,782,027,268	0.45
Grand Total	**3,829,539,696**	**2,247,800,160,713**	**0.17**

G. Reducing Leakages In The Appropriation And Funding The Proposed Increases: The requests for increased funding to the economic and social sector examined above could be funded from a number of omnibus provisions in the appropriation. Reductions and savings from these provisions could be reassigned to agriculture, education and health. These omnibus provisions include for instance: Presidency (maintenance services - N2.465billion, miscellaneous – N1.5 billion, capital projects that are administrative in nature – N3.7billion, National Sports Commission – N10 billion, purchase of 4 number aircrafts – N23.4 billion); SGF (Miscellaneous –N2.6 billion, on-going capital projects N2.1billion, total goods and non-personnel service – N3.8billion, National Identity Management Commission with total budget estimate of N7.6 billion; Committee on Land Reforms – N3 billion); National Assembly (materials and supply – N1 billion, miscellaneous 1 – N1.3 billion, other miscellaneous – N0.91billion, on-going capital projects – N1.7 billion; Senate travel – N5.1 billion, Senate miscellaneous 1 – N16.8 billion, other miscellaneous – N15.1billion, maintenance of motor vehicles – N430 Million; House of Reps (HOR) travel and transport general – N22.8 billion, HOR travel and transport training – N0.776 billion, HOR materials and supplies – N3.8 billion, HOR maintenance services – N1.5billion, HOR miscellaneous 1 – N16.9 billion and other miscellaneous – N13.5billion, HOR purchase of Legislative and Legal Books -N0.350 billion), Library books and periodicals -N355,143,000, etc. These proposals should be reviewed and made more realistic to accommodate savings. The miscellaneous expenditure of most MDAs is over-bloated and should be reduced.

5.3 MILLENNIUM DEVELOPMENT GOALS

The Mid-Point Assessment on the Implementation of the MDGs is also another milestone to be used in assessing governmental performance under the FRA. The Mid-Point Assessment is captured below in Table 6.

Table 6: Mid-Point Assessment of MDGs in Nigeria

GOAL	PROGRESS	ACHIEVABLE AT CURRENT LEVELS OF INVESTMENT ?	CHALLENGES	GOVERNMENT POLICY RESPONSES
1- Eradicate Extreme Poverty & Hunger	Among every ten Nigerians, five still live in poverty	May not be achievable without exceptional government efforts	Lack of modern technology in agriculture, creating economic and employment opportunities.	Commercial Agricultural Development Plan, Infrastructural investment in rural areas, NAPEP Conditional Cash Transfer
2- Achieve Universal Primary Education	9 out of 10 eligible children in school due to UBE interventions and private schools	Achievable	Completion and literacy rates remain low, Gender and regional inequality, inadequate teacher capacity	Initiatives, such as National Teacher's Corps. Comprehensive policy is a work in progress
3- Promote Gender Equality	For every 10 boys in school, there are 9 girls in school	Achievable	Social, economic and cultural factors, e.g. early marriage	National Gender Policy Child Rights Law to be passed at State-Level, Passage of CEDAW bill
4- Reduce Child Mortality	While substantial improvements have been recorded for 2007, the trend is still worrying and mortality rates are still very high	Not Achievable	Reluctant health-seeking behaviour	Integrated Maternal and Newborn Child Health Strategy (IMNCHS) National Health Bill being harmonized
5- Improve Maternal Health	No recent data, but the trend in maternal mortality appears to be worsening and the proportion of births attended by skilled health personnel is improving too slowly	Not Achievable	Poor state of health infrastructure, lack of skilled manpower, unwillingness of health workers to work in rural areas,etc	IMNCHS, NHIS, Safe Motherhood Programme
6- Combat HIV/AIDS, Malaria & other Diseases	HIV/AIDS prevalence rate has dropped from 5% to 4%. Malaria rates have dropped but still account for an annual average of 300,000 deaths	Achievable	Restricted acceptability of insecticide treated bed nets, malaria drug-resistance, high cost of ARVs	National Health Policy being harmonized, NHIS
7- Ensure	Mixed; access to safe	Achievable	Gas flaring, forest	Ministry for the Niger

Environmental Sustainability	water has risen from 54% to 60% but access to sanitation fell from 43% to 39%		cover and access to sanitation are yet to see significant progress	Delta, Revision of Housing Policy
8- Develop a Global Partnership for Development	Rapid increases in ICT access and teledensity, many regional initiatives (NEPAD, ECOWAS etc.) ODA rose but from a very low base and primarily as debt relief	Achievable	Poor infrastructure, poor security networks, unwillingness to scale up funding from development partners	Economic Partnership Agreements

Source: FGN MDG Office

Unfortunately, the Mid-Point Assessment showed no discernible improvements over the situation recorded for the years 2005 and 2006. The Office of the Senior Special Assistant to the President on MDGs (OSSAP-MDGs) states that between 2006 and 2008, a total of N321 billion was appropriated for investment in MDGs which amounts to 16% of the cumulative federal capital budget over the period. However, only 68% of the funds were expended[54]. An independent report commissioned by government comprising consultants and civil society indicated that for the year 2006, performance levels of projects varied between sectors and zones but overall national average was 54.1 percent[55]. The implication of these developments is that the realisation of the MDGs has been partly held back, not by lack of resources but by the low absorptive capacity of the agencies responsible for the expenditure. The plea of lack of resources would not have absolved Nigeria of her obligations. A case of availability of resources but refusal to use same to improve the living conditions of the people clearly amounts to dereliction of state duties which entitles everyone to the continuous improvement of the living condition[56].

A more recent assessment of Nigeria's position on the MDGS in **Table 7** indicates as follows[57]:

Goal	**Assessment**
Eradicate extreme poverty	Off track
Achieve universal primary education	On track
Promote gender equality and empower women	Possible to achieve if some changes are made
Reduce child mortality	Off track
Improve maternal health	Off track

[54] Presentation by OSSAP-MDGs at the State House April 21, 2009 to the Presidential Committee on the MDGs .
[55] Presentation by OSSAP-MDGs at the State House November 27, 2008 to the Presidential Committee on the MDGs.
[56] Article 11 (1) of the ICESCR.
[57] See the website of the MDG Monitor www.mdgmonitor.org, an initiative of the UNDP tracking country specific progress on the MDGs.

Control HIV/AIDS, malaria and other diseases	Possible to achieve if some changes are made
Ensure environmental sustainability	Insufficient information
Develop a global partnership for development	Insufficient information

It appears that the major challenge bedevilling the realisation of the economic and social objectives of the Constitution and indeed the MDGs is the absence of an entitlement mechanism that defines the rights and duties of the relevant stakeholders - the government as a primary duty holder and the benefiting citizens. Further, monitoring service delivery in terms of the actual services delivered to the people has been replaced by the sheer volume of contracts awarded, new structures built and general expenditure patterns that fail to measure value for money. Also, alleviating poverty, providing for basic existential rights and wealth creation cannot proceed properly in an economy where industrial and trade policy are de-linked from poverty reduction. Importing and distributing tricycles (Keke-NAPEP) and Insecticide-Treated-Nets can never be a sustainable option to poverty reduction. It enriches the nations that produce these items while impoverishing the country. Thus, the Federal Government has not been using the maximum of available resources for the realisation of MDGs.

Chapter Six

BORROWING AND DEBT MANAGEMENT

6.1 WORRIES OVER SUSTANABILITY OF NATIONAL DEBT

The Debt Management Office in accordance with the DMO Act, the National Debt Management Framework and spirit of the FRA has been conducting yearly Debt Sustainability Analysis (DSA) of the nation's public debts. The 2009 DSA was conducted under three different scenarios - the Baseline Scenario, Country Specific Optimistic Scenario (Accelerated Growth) and Country Specific Pessimistic Scenario (Reduced Oil production and Global Financial Meltdown) including stress tests[58]. **Table 8** shows the list of **External Debts Outstanding by Economic Sector as 31st December 2009.**

Economic Sector	Amount Outstanding USD millions	Percentage of DOD
Agriculture	558.82	14.16
Air Transport	9.75	00.25
Education and Training	379.96	09.63
Energy-Electricity	410.35	10.40
Energy-Gas	15.91	00.40
Environment	190.34	04.82
General	151.18	03.83
Ground Transport	71.91	01.82
Health and Social Welfare	730.15	18.50
Housing and Urban Development	85.60	02.17
Industrial Development	15.39	00.39
Investment	19.26	00.49
Irrigation and Related Act	58.43	01.48
Manufacturing-exc textile	6.85	00.17
Monetary policy	62.95	01.59
Multisector	42.79	01.08
Others	105.89	02.68
Rail Transport	1.72	00.04
Road Transport	201.46	05.10
Rural Development	62.40	01.58
Scientific and Tech Equipment	206.41	05.23
Telecommunications	93.59	02.37
Water Supply	466.19	11.81
Total	**3,947.30**	**100.00**

Source: DMO Website- www.dmo.gov.ng

[58] See Report of the Annual National Debt Sustainability Analysis, 2009 by the Debt Management Office.

For the Baseline Scenario, the external debt and total public debt will remain sustainable throughout the projection period. However, the worry is that:

> *The total public sector debt (external and domestic) to GDP ratio under the Baseline Scenario is projected at 9.2 percent in 2009 and would rise to 17.4 percent in 2029, which is well within the 40 percent threshold. The PV of total public sector debt to revenue ratio is projected at 58.7 percent in 2009 and would rise to 233.7 percent in 2029, against the threshold of 250 percent. However, the total public sector debt service to revenue ratio is expected to increase from 15.7 percent in 2009 to 27.8 percent in 2015, after which it would exceed the sustainability threshold. The latter which is a measure of liquidity will increase pressure on the country's ability to service its total public debt after 2015.*
>
> *...there is the risk of illiquidity which will affect the country's ability to service its total public debt in the medium to long term. The rising domestic debt service obligations will in the medium to long term pose a challenge to the country's liquidity indicators of debt sustainability[59].*

For the Country Specific Optimistic Scenario (Accelerated Growth), the general conclusion is that the country's external debt ratios would remain sustainable in the medium term. However, the caution is:

> *The PV of external debt to GDP ratio is projected at 1.6 percent in 2009 and will rise to 38.5 percent in 2017 after which it would exceed the sustainability threshold of 40 percent. The PV of external debt to export ratio is projected at 5.0 percent in 2009 and would rise to 149.9 percent in 2016, after which it would exceed the 150 percent threshold. The PV of external debt to revenue ratio is projected at 10.7 percent in 2009 and would increase to 214.2 percent in 2014, after which it would exceed the 250 percent indicative threshold. The above solvency indicators which are based on the macro assumptions of massive increase in investments mainly from the less concessional sources would lead to increase in the debt burden of the country in the medium term and unsustainability in the long term.*
>
> *In summary, both the solvency and liquidity indicators under the Country Specific Scenario of increased massive investments from the less concessional sources to finance the development targets of the Vision 20:2020 and the 7–Point Agenda will lead to the problem of debt unsustainability in the medium to long term. This calls for caution in the manner the country accesses foreign loans to finance the proposed development agenda[60].*

For the Country Specific Pessimistic Scenario (Reduction in Oil and Global Financial Meltdown), the worry is that:

> *The PV of total public sector debt to GDP ratio is projected at 8.7 percent in 2009 and would increase to 39.4 percent in 2018 after which it would remain unsustainable. The PV of total public sector debt to revenue ratio is projected at 58.7 percent in 2009 to increase to 233.7 percent in 2029 which is within the indicative threshold. The total*

[59] 2009 DSA report at page 3.
[60] Pages 3-4 of the 2009 DSA Report.

public sector debt service to revenue ratio is projected at 15.6 percent in 2009 and would rise above the indicative threshold after 2010. In general, the simulation under the pessimistic scenario showed that Nigeria's total public debt would not be sustainable in the long run as long as the global financial meltdown persists and if there is no early resolution of the Niger Delta issue[61].

Generally, it appears that after the exit from the Paris and London Club of Creditors, Nigeria has been speedily building up her domestic debts and slowly but steadily once again increasing external debts[62]. The total external debt stock by economic sector as December 31 2009 is USD 3,947.30 million while the total domestic debt portfolio stood at N3,228.03 billion[63]. Essentially, Nigeria's total indebtedness (external and domestic) stands at over $26 billion as at the end of December 2009. The domestic debt stock is made is made up as shown in Table 8.

Table 9: Federal Government Domestic Debt Stock Outstanding by Instrument as at 31st December 2009.

Instrument	Amount in billion Naira	%
FGN Bonds	1,974.93	61%
NTBs	797.48	25%
Treasury Bonds	392.07	12%
Development Stocks	0.52	0%
Promissory Notes	63.03	2%
Total	3,228.03	100%

The caution is that a debt is a debt and must be repaid. It is acknowledged that the terms and tenor of the debts and their local nature has different implications on the economy when compared with foreign loans. However, considering that Nigeria's total indebtedness at the time of the debt relief in 2005/2006 was about $36 billion, accumulating a debt of about $26 billion three years down the line does not show fiscal prudence. Apparently, no lessons have been learnt from the previous debt trap. Further, there is no evidence that these fresh loans have been prudently applied to solve Nigeria's myriad of problems in infrastructure and social welfare.

The provision in the 2010 Appropriation Bill of the sum of N517 billion for debt repayment shows that we are back on an unsustainable debt trajectory. This provision is far higher than the combined provisions for education (N249,086,254,059) and health (N161,845,511,090) by about N106 billion. Also the cost of servicing external debts which has averaged 6% is very high in consideration of the fact that these are concessional debts which attract no interest rates but service charges which generally

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[61] Page 4 of the 2009 DSA Report.

[62] The 2009 DSA Report recommends for the year 2010, a total borrowing of US5.89 billion from external sources and N1,325.7 billion from internal sources. The Federal Government by the DSA recommendation is allowed to borrow 15 percent of the external ceiling and 30 percent of the local ceiling- see page 5-6 of the 2009 DSA Report.

[63] Source- www.dmo.gov.ng.

do not exceed 1-2%. Servicing an external debt of about $3.9 billion with N38.92 billion does not show the loan to be concessionary[64].

6.2 WORRIES OVER SUSTAINABILITY OF SUB-NATIONAL DEBT

The Debt Management Office has designed Sub-national Borrowing Guidelines which should guide states and local governments in their borrowing from banks and raising bonds from the capital market. However, as a result of dearth of data, the DMO could not conduct DSAs for states. The 2009 DSA Report states that[65]:

> *It is expected that, as soon as the various initiatives put in place by DMO to assist States maintain reliable domestic debt data is achieved, in addition to ongoing efforts by the National Planning Commission and the National Bureau of Statistics to also assist them come up with states' GDP figures, it would then be possible to conduct a DSA for each state. In the meantime, states are implored to imbibe the culture of fiscal prudence, develop sub-national debt management capabilities and guard against incurring frivolous debts which are not in accordance with the Fiscal Responsibility Act and the Sub-national Borrowing Guidelines as enshrined in the National Debt Management Framework*[66].

The summary of States External Debt Projections 2009 shows the debts as sustainable provided that States are not permitted to go on a borrowing spree. It comes up to a total figure of N20,788,598,278.3. The **Total External Debt Stock of States in USD** as at December 31 2009 is not available from the website of DMO but that of 2008 is as shown in **Table 10** below. The increase or decrease between the figures of 2008 and 2009 will be marginal considering that states have not been borrowing externally in the recent years.

Table 10: Total External Debt Stock of States in USD as at December 31 2008

S/No	States	Debt Stock	% of Total
1	Abia	25,893,422.00	1.56
2	Adamawa	21,206,254.66	1.28
3	Akwa Ibom	60,364,679.75	3.64
4	Anambra	18,892,185.82	1.14
5	Bauchi	73,386,211.63	4.42
6	Bayelsa	25,788,797.44	1.55
7	Benue	21,487,668.97	1.29
8	Borno	15,077,862.30	0.91
9	Cross River	99,387,962.84	5.99
10	Delta	21,570,329.07	1.30
11	Ebonyi	30,088,193.24	1.81
12	Edo	31,679,524.18	1.91
13	Ekiti	33,856,337.62	2.04
14	Enugu	26,620,622.64	1.60
15	Gombe	17,528,514.37	1.06

[64] *2010 Budget: Mugu smiles back into debt trap*", Les Leba in Vanguard of March 14 2010.
[65] Page 4 of the 2009 DSA Report.
[66] Essentially, there is no comprehensive domestic debt data for the states including their exposures to Nigerian banks- there is an ongoing initiative by the Central Bank to collate same.

16	Imo	45,165,416.15	2.72
17	Jigawa	16,889,226.34	1.02
18	Kaduna	109,102,333.29	6.57
19	Kano	39,824,177.00	2.40
20	Katsina	77,700,535.30	4.68
21	Kebbi	45,310,617.91	2.73
22	Kogi	30,352,870.57	1.83
23	Kwara	24,972,143.08	1.50
24	Lagos	270,840,818.98	16.31
25	Nassarawa	23,278,453.38	1.40
26	Niger	27,634,748.90	1.66
27	Ogun	54,868,136.63	3.30
28	Ondo	41,874,347.84	2.52
29	Osun	57,663,946.01	3.47
30	Oyo	106,716,971.10	6.43
31	Plateau	29,255,196.92	1.76
32	Rivers	32,338,802.05	1.95
33	Sokoto	33,974,354.62	2.05
34	Taraba	19,642,836.94	1.18
35	Yobe	18,787,421.83	1.13
36	Zamfara	17,233,048.36	1.04
37	FCT	14,243,206.63	0.86
	Total	**1,660,498,176.35**	**100.%**

Source: DMO Website

However, the debt challenge for States is on internal indebtedness vis, borrowing from banks, the capital market and other sources. The example of Bayelsa State, an oil producing state that earns 13% derivation which should make it one of the richest states in Nigeria gives a clue about the indebtedness of States. It is reported to be owing about N75 billion to the banks and is proposing to float bonds to source loans to the tune of N100 billion naira from the capital market. If this succeeds, its total local indebtedness will be about N175 billion naira[67]. Chief Asara A. Asara, the State's Commissioner for Information and Strategy disclosed that the State runs a monthly deficit of N2.671 billion. He stated that the State needs N7.5 billion monthly but the total available revenue is about N4.7 billion. The State's IGR is only N300 million while the monthly allocation is about N4.4 billion. N2.9 billion is used monthly to service and repay debts while the wage bill gulps N3.6 billion[68].

Although the FRA's provision on deficit financing (section 12) is not applicable to States, best practices indicate that a deficit of not more than 3% of the State GDP is ideal. Running a big quantum of debts financing definitely will lead the State into a financial crisis sooner than later. But the provisions of sections 41 and 42 of the FRA applicable to States indicates that using over 50% of a state's monthly income for debt servicing is not fiscally prudent. Further, by article 2.24 headed "Borrowing from Commercial Banks"

[67] There is a major and sustained opposition from civil society to the state's plans to raise the N100 billion naira bond.
[68] *Obedience in the Breach* - report of the implementation of the FRA, January to June 2009 by CSJ.

of the Guidelines for Sub-national Borrowing[69], the monthly debt service ratio of a sub-national should not exceed 40% of its monthly federation allocation of the preceding 12 months. Obviously, the State is in violation of these rules[70]. This is a clear case that calls for the intervention of the Fiscal Responsibility Commission to determine the consolidated debt of the State, and request that it be brought within prudential limits within a prescribed time frame.

In Ogun State, the executive and legislature are on the war path over a proposal to float a bond to raise money from the capital market. The Ogun State offer of N60 billion appears to have run into a storm as the State House of Assembly passed a resolution disassociating the legislature from the bond and asking investors to stay away from the offer or buy into it at their own risk. The House of Assembly stated that:

> *It is the opinion of this Honourable House that all financial institutions, banks, the Securities and Exchange Commission, the Nigeria Stock Exchange, the Registrars of financial securities, be informed that no financial obligations, commitments or instruments be advanced to the government of Ogun State until this Honourable House ascertains the extent of financial exposure and value of investment profile of Ogun State unless such a request is ratified by a resolution of Ogun State House of Assembly.*

The Sate Governor had indicated that the N60 billion funds would be used for the construction of a cargo airport, deep sea port, tourism as well as the development of education. It is imperative to state that the FRA requires the prior approval of the legislature before bonds or any form of indebtedness can be incurred by a State. There is also the issue of the amount proposed by the State - N60 billion. The Guidelines for Sub-national Borrowing prepared by the Debt Management Office[71] states that the total amount of loans outstanding at any particular time including the proposed loan shall not exceed 50% of the actual revenue of the body concerned for the preceding 12 months.

Imo State has raised N18.5 billion from the capital market at N1000 per unit at a coupon and interest rate of 12.5% which was later amended by the legislature to read “prevailing market rate” and due 2016. The proceeds of the offer according to the Imo State Bonds Law No. 6 of 2008 as amended by the Imo State (Amendment) Bonds Law No. 8 of 2009 will go into financing three major projects notably the rehabilitation of water schemes, rehabilitation and construction of critical roads as provided in the 2008 budget and the State’s equity investment in the Oguta Wonder Lake Resort and Conference Centre. Further, it will go into all capital projects as encapsulated in the 2008 budget. It appears that the Imo State offer complied with due process because there were no voices of dissent against the offer. However, all available information indicates that there was no public hearing which allowed the people to make an input into the borrowing process. It was an arrangement between the executive and the legislature.

[69] Issued by the Debt Management Office.

[70] The posers emanating from the above include: how were these debts incurred? On what projects were they spent? Did the legislature approve of these loans? Did Bayelsa people have value for money?

[71] *Sub-national Borrowing Guidelines 2008-2012* developed by the Debt Management Office.

There is no information on the existence of a Cost Benefit Analysis (CBA) for the Imo State and other State bonds as required by section 44 of the FRA[72]. A CBA could be likened to an Environmental Impact Assessment. It should ideally be published in the mass media and a place for reading and inspection given to the public. Time would be given for the public to submit their opinion, objections and views on the CBA and a public hearing held to collate and harmonise all points of view before a decision is taken by the legislature to approve or reject the loan proposal.

The objects of borrowing should be reconciled with the policy framework and direction of governance in Vision 202020, 7 Point Agenda, NEEDS, SEEDS, etc. For instance, a government that proclaims to provide the enabling environment for the private sector to create and generate wealth and employment should not be seen to be borrowing to build hotels, conference centres, airports, etc, which are best left to the private sector or to be built under a public private partnership that would not increase the debt profile of the State. If the logic of privatization is carried to its logical conclusion, in a country where the Federal Government is busy privatizing airports and concessioning sea ports, it does not make sense for State Governments to mortgage the State's future in debts to build equivalent infrastructure which would sooner or later be handed over at give away prices to the private sector. It would have been more consistent with the logic of privatisation to allow private foreign and local capital to build conference centres, airports and seaports under build operate and transfer, etc, models and or manage them and charge recovery costs for their services.

Lagos State Government had previously borrowed under its Bonds, Notes and Other Securities Issuance Law No. 17 of 2008. The particular projects to be developed through the proceeds of the bonds are not stated in the law. Rather, the Government is given a general power to raise loans for both economic and developmental purposes. The repayment is secured by the appropriation of 15% of the internally generated revenue of the State to be deposited into the Consolidated Debt Service Account – a form of Sinking Fund created by the law.

The governance challenge in all these debts being procured by State Governments is that by the provisions of section 271 of the Investments and Securities Act under which States raise bonds:

> *Any loan by any of the bodies to which this part of this Act applies shall, until the loan is fully repaid, be a binding and continuing obligation on the Federal, State or Local Government, board or supervisory Ministries of corporate entities to which this Act applies with regards to the repayment of all principal sums and interest payments due and outstanding under the loan including other terms and conditions arising therefrom.*

Thus, the silent majority of the people who are not consulted when these borrowing decisions are made will bear the cost of repayment at the critical time and this may lead to disruption of basic social services if the State is unable to manage the resources well

[72] A Cost Benefit Analysis compares the cost of borrowing with the benefits the citizens will derive from it.

and properly schedule repayment. The current repayment approach is to create a Sinking Fund that is to be funded through the legislative appropriation process and in the event of a default, through the Irrevocable Standing Payment Order issued by the State to the Accountant General of the Federation, to deduct at source from the statutory allocation of the state to repay the principal and interest.

Sub-national borrowing from the bonds market is justified *inter alia* as facilitating the disciplining of public sector spending by market's allocative efficiency and introducing greater transparency and openness in fiscal management considering that rating agencies will be involved and detailed financial reports will be demanded. But Nigeria's sub-national fiscal governance is yet to witness these great fiscal virtues despite the volume of resources states have raised from the capital market. 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 loan[73]. This may however increase the cost of borrowing. Through this process, both the State borrower 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[74]. Separating debt repayment from faith in the project, its income streams and general viability and tying it to allocations from Nigeria's petro naira encourages reckless borrowing and lending. Non income earning projects should be financed through appropriating already available resources.

6.3 BORROWING WITHOUT DUE PROCESS - THE WORLD BANK LOANS

Mid-year media reports indicate that the Federal Government has secured a World Bank loan of $1b to finance power, education and HIV/AIDS projects repayable over 35 to 40 years with a ten year period of grace. The procedure adopted in securing this facility challenges the provisions of the FRA. 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 for which the intended borrowing is to be applied. And by subsection (2) of the section, any borrowing requires the existence of <u>prior authorization</u> in the Appropriation Act or Law for the purpose for which the borrowing is to be utilized.

First, the Ministry of Finance did not present any cost benefit analysis comparing the cost of taking this loan with the benefits the citizens will likely derive from it. There are no studies indicating the impact of previous loans on the citizens. However, previous loans were frittered away without tangible results or improved governmental service delivery while citizens have been made to bear the brunt of paying back the loans through reduced funding of epileptic public services.

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[73] The income streams of a conference centre, an airport, etc should be able to pay for the repayment over the long term.
[74] *Sub-national Investment Needs and Financial Market Response* by Marco Magrassi, November 2000; *Creating a Regulatory Framework for Sub-national Borrowing* by Lili Liu, 2008.

This loan commitment was neither approved in the 2009 Appropriation Act or any other law known to Nigeria's constitutional and statutory jurisprudence. The FRA is clear that what is required is the prior authorization of the legislature and not for the executive to tie the hands of the legislature by committing Nigeria to new loans and thereafter seek legislative ratification of the illegal commitment. For the Board of the World Bank to approve the loan means that the executive presented an application before it. Legislative approval should have been sought before the application is sent to the World Bank. The House of Representatives had mandated its Committee on Aids, Loans and Debt Management to investigate the loan transactions and report back to it.

The fact that Nigeria's Debt Sustainability Analysis indicates that our public debt profile as a proportion of national income is sustainable does not mean that we should borrow recklessly as happened in the past. The executive arm of government by informing Nigerians of this commitment at the point of approval by the Board of the World Bank is in clear violation of its commitment under section 48 (1) of the FRA to *ensure that its fiscal and financial affairs are conducted in a transparent manner and accordingly ensure <u>full and timely disclosure and wide publication of all transactions</u> and decisions involving public revenues and expenditure and their implications for its finances*[75].

Table 11 shows **Recent World Bank Credits to Nigeria**.

Project Name	**IBRD/IDA (shown in US$ millions)**	**Status**	**Approval Date**
Financial Sector and Public Financial Management Development Policy Credit	500	Active	28 – JUL – 2009
Nigeria Electricity and Gas Improvement Project (NEGIP)	200	Active	16 – JUN – 2009
Nigeria Electricity and Gas Improvement Project (NEGIP)	400	Active	16 – JUN – 2009
Malaria Control Booster Project – Additional Financing	100	Active	16 – JUN – 2009
Nigeria HIV/AIDS Program Development Project II	225	Active	16 – JUN – 2009
Lagos Eko Secondary Education Project	95	Active	16 – JUN – 2009
Commercial Agriculture Development	150	Active	15 – JAN – 2009
Power to the Poor: Off-Grid Lighting from Cassava Waste in Nigeria	0	Active	30 – DEC– 2008
Pre-paid Health Scheme Pilot in Nigeria	0	Active	19 – NOV– 2008
Partnership for Polio Eradication Project – Additional Financing (FY08)	50	Active	30 – SEP– 2008
Second Health Systems Development – II Additional Financing	90	Active	30 – SEP– 2008
Community and Social Development Project	200	Active	01 – JUL – 2008
THIRD NATIONAL FADAMA DEVELOPMENT PROJECT (FADAMA III)	250	Active	01 – JUL – 2008
Nigeria: Building Statistical Capacity at State Level	0	Active	03 – JUN – 2008
Nigeria Federal Roads Development Project	330	Active	03 – APR– 2008
Rural Access and Mobility Project (RAMP)	60	Active	01- APR - 2008
NG-Lagos Landfill Gas & Composting (FY06)	0	Active	09 - J AN - 2008
Nigeria National Energy Development Project – Carbon	0	Active	06 – AUG - 2007
Nigeria Federal Science & Technical Education at Post-Basic Levels (STEPB)	180	Active	22 – MAY - 2007

[75] Underlining supplied for emphasis.

Nigeria HIV/AIDS Additional Financing	50	Active	22 – MAY - 2007
Nigeria State Education Sector Project	65	Active	26 – APR - 2007
Nigeria Lagos Urban Transport Project	50	Active	10 – APR - 2007
Community – Based Poverty Reduction Project Supplemental	25	Closed	01 – FEB - 2007
Malaria Control Booster Project	180	Active	12 – DEC -2006
NG-CF Aba Cogeneration (FY06)	0	Active	19-JUL-2006
Lagos Metropolitan Development and Governance Project	200	Active	06 – JUL – 2006
Second National Fadama Development Critical Ecosystem Management Project	0	Active	11 – APR– 2006
Avian Influenza Control and Human Pandemic Preparedness and Response Project for Nigeria.	50	Active	29 –MAR – 2006
Nigeria: Extractive Industries Transparency Initiative Implementation	0	Closed	25 – JAN – 2006
Niger Delta Community Foundations Initiative	0	Active	20 –SEP – 2005
Nigeria National Energy Development Project GEF MSP	0	Active	22 –AUG – 2005
Nigeria National Energy Development Project	172	Active	01 – JUL – 2005
Second National Urban Water Sector Reform Project	200	Active	01 – JUL – 2005
State Governance and Capacity Building Project	18.1	Active	28 –JUN – 2005
Partnership for Polio Eradication Project Supplemental Credit	51.7	Active	24 –MAR – 2004
Sustainable Management of Mineral Resources	120	Active	14 –DEC – 2004
Federal Government Economic Reform and Governance project	139.99	Active	14 –DEC – 2004
National Urban Water Sector Reform Project 1	120	Active	15 – JUN – 2004
Nigeria National Capacity Needs Self-Assessment	0	Closed	15 – APR –2004
Micro, Small and Medium Enterprise Project	32	Active	16 –DEC – 2003
Second National Fadama Development Project	100	Active	16 – DEC - 2003
Local Empowerment and Environmental Management Project	0	Active	31 – JUL – 2003
Local Empowerment and Environmental Management Project	70	Closed	31 – JUL – 2003
Partnership for Polio Eradication Project	28.7	Active	29 –APR – 2003
Lagos Urban Transport Project	100	Active	21 –NOV – 2002
Universal Basic Education Project	101	Closed	12 –SEP – 2002
Community –Base Urban Development Project	110	Active	06 – JUN – 2002
Second Health Systems Development	127.01	Active	06 – JUN – 2002
Transmission Development Project	100	Closed	31 – JUL – 2001
HIV/AIDS Program Development Project	90.3	Active	06 – JUL – 2001
PRIVATISATION SUPPORT PROJECT	114.29	Active	14 – JUN – 2001
Community Based Poverty Reduction Project	60	Closed	20 –DEC – 2000
Small Towns Water Supply and Sanitation Program Pilot Project	5	Closed	18 –MAY – 2000
ECONOMIC MANAGEMENT CAPACITY BUILDING PROJECT	20	Closed	11 –MAY – 2000
Second Primary Education Project	55	Closed	11 –MAY – 2000

Source: www.worldbank.org

6.4 CONTINUED NON CONCESSIONAL BORROWING BY GOVERNMENTS FROM LOCAL BANKS

A review of the critical provisions of the Act governing lending by banks and financial institutions to the three tiers of government is imperative. These provisions appear to have been neglected and observed in the breach by both governments and the banks. However, their neglect may hurt the economy and financial interests of banks in the long run. Specifically, we are referring to sections 41, 44 and 45 of the Act. It is imperative to reproduce the relevant parts of these sections and thereafter make comments on them.

S.41 (1): The framework for debt management during the financial year shall be based on the following rules-

(a) Government at all tiers shall only borrow for capital expenditure and human development, provided that such borrowing shall be on <u>concessional terms with low interest rate and with a reasonably long amortization period subject to the approval of the appropriate legislative body</u> ….; (underlining supplied for emphasis)

(2) *Non-compliance with the provisions of this section shall make the action taken an offence*.

"Concessional terms" is defined in the interpretative section of the Act to mean that the terms of the loan must be at an interest rate not exceeding 3 percent. From available information, with the exception of facilities from international development agencies like the World Bank which do not *stricto sensu* have interest rates but service charges, no Nigerian bank loan or any other credit facility can come at 3 percent interest rate. The prevailing double digit interest rates cannot by any stretch of the imagination be described as low interest rates. Further, most of these bank facilities are short term and as such do not have reasonably long amortization periods. Essentially, this provision bars Nigerian banks from lending to the three tiers of governments.

S.44 (1): 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.

(2) Without prejudice to subsection (1) of this section, each borrowing shall comply with the following conditions-

(a) the existence of <u>prior authorization in the Appropriation or other Act or Law</u> for the purpose for which the borrowing is to be utilized; and (underlining supplied for emphasis)

(b) the proceeds of such borrowing shall solely be applied towards long-term capital expenditures.

S.45 (1): <u>All banks and financial institutions shall request and obtain proof of compliance with the provisions of this Part before lending to any Government in the Federation</u>.

(2) <u>Lending by banks and financial institutions in contravention of this Part shall be unlawful.</u> (underlining supplied for emphasis)

Essentially, there is a positive obligation on banks and financial institutions to ensure that the provisions of this Act are complied with by governments before concluding a lending transaction. The implication of lending contrary to the Act is clearly spelt out - unlawfulness of the lending. This will definitely make it extremely difficult for the bank to recover its money in the event the State refuses to pay and contests the loan agreement in court. Even if the State refuses to contest the loan transaction, section 51 of the Act entitles every Nigerian to challenge the unlawful transaction in the following words:

> *S.51: A person shall have legal capacity to enforce the provisions of this Act by obtaining prerogative orders or other remedies at the Federal High Court, without having to show any special or particular interest.*

From the clear provisions of the Act, banks have been barred from any new loan transactions to governments as long as the interest rate remains above three percent. Any new loans and interest rates in violation of this Act, as an unlawful transaction, will no longer be recoverable through an action in court.

It has been reported that the CBN has asked banks to be cautious in their lending to governments and the public sector. According to a new circular, a maximum limit of ten percent of the total credit portfolio should be placed on public sector credits both on and off balance sheet. This does not appear to be in tandem with the requirements of the FRA. Beyond the percentage to be dedicated to public and private sectors, the CBN appears oblivious of its responsibilities for the enforcement of the FRA.

It is imperative that the Central Bank of Nigeria uses banking supervision to enforce the provisions of the Act and not just limit itself to sheer percentages to be lent to the sectors. It should properly guide the banks in any future requests from governments for a loan. Any borrowing by governments from banks under the present double digit interest regime will be a clear violation of the FRA. The Report also noted the reported stoppage by the President of the use of Irrevocable Standing Payment Orders that support States borrowing from the banking system[76]. What could not be officially established is if this has effectively stopped States from local bank borrowing and if the Federal Government has also stopped borrowing from the banks. However, there are strong indications and reliable information that governments are still borrowing from the banking sector.

[76] As stated by Remi Babalola, Minister of State, Finance, at the workshop on *Effective Audit and Investigations for Improved Tax Compliance* organized by MIS Training Institute UK in collaboration with Federal Inland Revenue Services.

Chapter Seven

THE MTEF 2010-2012: ANCHORING THE 2010 APPROPRIATION BILL

7.1 BACKGROUND TO THE 2010 APPROPRIATION BILL

The FRA 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 to ensure the promotion and enforcement of the nation's economic objectives, and for related matters[77]. 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 the MTEF shall form the anchor and the basis for the preparation of the annual budget so that policy, planning and budget 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 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 MDAs in the preparation of their 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[78]. The resulting MTEF is to be considered and

[77] This is the long title of the Act.
[78] Section 13 of the Act.

endorsed by the EXCOF[79] and take effect upon approval by a resolution of the each House of the National Assembly[80]. Thus, the law designs the MTEF process comprehensively to give a voice to every stakeholder in the determination of national priorities for public expenditure.

7.2 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[81]. 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, 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[82]. 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.

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[83]. 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

[79] Section 14 (1) of the Act.
[80] Section 14 (2) of the Act.
[81] Section 14 (1) of the FRA.
[82] See page 41 of the Fiscal Strategy Paper 2010-2012.
[83] If the MTEF is ready by the end of the second quarter and goes for the approval of the National Assembly in July, the Appropriation Bill should get to the legislature before August and eventually passed before the beginning of the New Year.

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.

7.3 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 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*[84]. CSOs did not also participate in the documentation stage while costing and allocation of envelopes were

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

not done at the strategy sessions[85]. 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 MOF and the 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.

7.4 ISSUES IN THE MTEF 2010-2012

A. Deficits: The MTEF 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 the 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:

[85] Action Aid, supra.

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 and development. 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 MDGs may not materialize. 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: There is 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 GDP. Under the MTEF 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 low 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% attained between 2004 and 2008. Thus, there is no connection between Vision 20: 2020 and the real world of Nigeria. Further, there is no mention of a fiscal policy framework to encourage investments in the sectors where the nation has comparative advantage.

Chapter Eight

THE 2010 APPROPRIATION BILL AND THE FRA

8.1 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 MDGs and improve the standard of living of the people[86]. 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 target real 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 12.

Table 12: 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
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***

[86] Parts 8.1 to 8.5 include Tables and issues from CSJ's Analysis of the 2010 Federal Budget.

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 signature bonus, special/levies accounts etc .***Excluding debt servicing. **** These figures are drawn from the Revenue Framework of the Appropriation Bill.*

8.2 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[87]. 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 ECA. The ECA has played a

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

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 $6.2 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 pre-determined 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 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.

8.3 THE QUANTUM OF EXPENDITURE AND THE RESULTING DEFICIT

The total projected aggregate expenditure is N4,079.7 trillion and a budget deficit of -N1,562.6 trillion which represents a Deficit/GDP ratio of approximately – 4.8%. This 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. The tendency towards a realistic, affordable and consistent resource envelope is being 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[88].

The President has not informed Nigerians of any clear and present threat to national security, neither has a state of emergency been declared. It is also imperative to consider the quantum of 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 social welfare and 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[89] 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.

8.4 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% is 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.

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. 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

[88] Section 12 (2) of the FRA.
[89] 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 8 2010.

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 13: 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 billion.** The borrowing programme of the Federal Government in 2010 is further defined as follows:

Table 14: Borrowing Programme of the Federal Government for Fiscal Year 2010[90]

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 billion 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 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

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

(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 13), the Report 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.

8.5 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.

8.6 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 14. This is not in tandem with the need for predictability of expenditure and proper planning.

Table 15: MTEF Aggregates and the 2010 Projections[91]

	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.

8.7 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.

8.8 CAPITAL EXPENDITURE[92]

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 2009's 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.

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

[92] A good part of this section is taken from CSJ's Analysis of the 2010 Federal Appropriation Bill by Eze Onyekpere and Dr William Fonta.

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.

8.9 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[93], involving the full emancipation of the human personality, the legislature intended other targets to focus on such developmental issues such as targets on the MDGs, the rights to adequate housing, social security, employment figures, the best attainable state of physical and mental health and the right to education, etc. 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..*.

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:

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

(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.

8.10 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 and save cost. In addition, such procurements should have warrantee*[94] *and maintenance clauses.*

It appears that this measure is contrary to procurement procedures stated in the 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;

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

(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.

(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 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 proposing 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.*

8.11 EVALUATION OF RESULTS OF PROGRAMMES FINANCED WITH BUDGETARY RESOURCES

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[95]- 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 know what has changed positively or negatively through the expenditure of government resources. However, neither the Appropriation Bill nor the accompanying documents provided the evaluation of results of programmes financed through budgetary resources as required by section 19 (d) of the Act.

8.12 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 or whether these figures are 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.

8.13 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

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

Federation Account. Apparently this is fundamentally flawed and not supportable by law and jurisprudence considering that the section did not contemplate such expenditure[96]. 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 Report 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.

8.14 ESTIMATED REVENUE FROM SCHEDULED CORPORATIONS

Table 16 provides the details of the revenue forecast from scheduled corporations.

B	**SUMMARY DIVIDEND, OPERATING SURPLUS BY FGN OWNED PARASTATALS AND COMPANIES APPROVED 2008 – 2009 BUDGET AND 2010 ESTIMATES**				
S/NO	**MINISTRIES/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 Authority	3,109,399,098.90	7,560,954,911.91		2,571,773,185.88
4	Nigeria Ports Authority	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 & Dev. 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 Automotive Council	79,248,626.23	328,984,345.80		111,900,299.49
13	National 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 Organization of Nigeria	31,093,990.99	258,840,000.00		88,041,494.65
16	Nigeria Television Authority	155,469,954.95	647,100,000.00		220,103,736.63
17	NAFDAC	197,783,378.86	517,680,000.00		176,082,988.30
18	Corporate Affairs Commission	235,003,436.20	1,941,300,000.00		660,311,209.88
19	Nigeria 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 Examination Council	553,793,460.80	2,135,430,000.00		726,342,330.87
26	West African Examination 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	Nigeria Env. Standard Reg. & Enfor.		647,100,000.00		220,103,736.63

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

	Agency				
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**	**194,330,000,000.00**		**66,099,148,723.08**

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 under-estimation 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 15 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, i.e., 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[97]. The monies expected from the Joint Admissions and Matriculation Board, West African Examination Council and the National Examination Council are also under-estimated 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 public corporations are owing the Treasury outstanding loans totaling N59.542 billion and there is evidence of capacity to repay in most of the corporations. 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 the 2009 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.

[97] 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 Nine

SPECIFIC ISSUES OF INTEREST

9.1 RESTRICTION ON THE UTILISATION OF THE PROCEEDS OF THE SALE OF PUBLIC ASSETS

Section 53 of the Act places a restriction on the utilization of the proceeds of the sale of public assets in the following words:

> *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*

Public properties and rights over public assets would include the proceeds of privatization, government's receipts in public private partnerships, sale of licences and licensing fees, etc. How can this be monitored and tracked to ensure that the proceeds are utilised according to law? Considering that all revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under the Constitution or any Act of the National Assembly to any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund[98]. No special fund has been created to receive the proceeds of the sale of public assets (except the Privatisation Proceeds Fund) and all proceeds go undifferentiated into the Consolidated Revenue Fund. Essentially, this provision is inadvertently violated through the yearly appropriation process. A special fund may be needed to receive the moneys and revenue and target them to specific capital projects mainly for the creation of wealth and realisation of MDGs.

9.2 THE NIGERIA DEPOSIT INSURANCE CORPORATION AND THE FRA

Section 22 of the FRA provides as follows:

> (1) *Notwithstanding the provisions of any written law governing the corporation, each corporation shall establish a general reserve fund and shall allocate thereto at the end of each financial year, one-fifth of its operating surplus for the year.*
>
> (2) *The balance of the operating surplus shall be paid to the Consolidated Revenue Fund of the Federal Government, not later than one month following the statutory deadline for publishing each corporation's accounts.*

[98] Section 80 of the Constitution.

An issue has arisen on how the provisions of this section relates to a corporation such as the Nigeria Deposit Insurance Corporation (NDIC). NDIC recently stated that the FRA threatens the banking system because leaving it with just 20% of its operating surplus at the end of every year will be insufficient to meet its obligations of paying deposit insurance to bank customers if the need arises. The implication of this provision is that one huge bank failure would wipe out the deposit insurance fund. NDIC therefore called for the amendment of the FRA.

The NDIC Act[99] provides it with a share capital of five billion naira to be held at the ratio of sixty and forty percent respectively by the Central Bank of Nigeria and the Federal Ministry of Finance. It has a general reserve fund into which shall be paid the corporation's net operational surplus before tax if the reserve fund is less than ten times the authorised capital[100]. However, where the reserve fund is more than ten times the authorized capital at the end of the year, seventy five percent of the net operational surplus shall be transferred to the reserve fund, fifty percent of the remaining amount after tax shall be applied to reduce the annual premium payable by insured institutions while the remaining fifty percent shall be paid to the shareholders[101]. But all these provisions have been overtaken by the FRA.

The Report was not able to verify the exact volume of NDIC's reserves to determine if it has reached ten times the value of its authorized capital. NDIC's case appears to have some merit; the challenge is for it to dialogue with the authorities in the executive and the legislature to see to the possibility of having a waiver or an amendment to exempt the corporation.

9.3 CLARITY OF ROLES AND RESPONSIBILITIES

Despite constitutional and FRA provisions, the turf war between the executive and the legislature on their roles and responsibilities in the appropriation process has continued. The posers include; who determines the size of the budget? Who has powers to include or remove projects and spending heads from the budget? At what stage should expenditure proposals be introduced?

The executive have always claimed a constitutional right to initiate a budget and holds that the legislature can reduce but not increase the budget because any increase partakes of the nature of initiation as regards the excess amount over and above the total figures in the Appropriation Bill. Another school of thought holds the view that the legislature is at liberty to amend, meaning to increase or reduce executive budget proposals. Since what is laid before the legislature is a proposal in form of a bill, it is still subject to the express and inherent powers of the legislature and those powers do not in any way imply the passage of the bill exactly in the form presented.

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[99] Cap. N102, Laws of the Federation of Nigeria, 2004-section 11.
[100] Section 12 (1) of the NDIC Act.
[101] Section 12 (2) of the NDIC Act.

This turf war needs to be resolved once and for all by a judicial determination of the position of the contending parties. However, it is pertinent to point out that the appropriate time to include issues in the Appropriation Bill by the legislature is not when the bill comes before the National Assembly but during the MTSS preparation stage so that the projects are all contained in the overall MTEF. This position is based on the aphorism that nothing goes into the annual budget that is not contained in the MTEF and the further fact that the MTEF is subject to legislative approval before the annual budget is drawn from it. And to make for capacity and information parity between the executive and the legislature in the budgeting process, it is pertinent that the legislature establishes the Legislative Budget Office to enhance its competence and skills in budgeting.

9.4 EXCESS CRUDE ACCOUNT

There has been a persistent clamour for savings in the excess crude oil revenue account to be shared among the three tiers of government and the account closed. The basis for the clamour is hinged on section 162 of the 1999 Constitution which is stated to have a established a zero sum Federation Account - all moneys that come into the said Federation Account are to be shared at regular intervals. Previous federal budgets since 2004 have been predicated on a crude oil reference commodity price below the actual price in the international market. What is to be done with the excess income is captured in section 35 (2) of the Fiscal Responsibility Act which states that savings for each government should;

> *…be deposited in a separate account which shall form part of the respective Governments Consolidated Revenue Fund to be maintained by the Central Bank of Nigeria by each Government.*

The Act further mandates the Central Bank of Nigeria to consult the Minister of Finance, State Commissioners of Finance, Local Government Treasurers for the purpose of investing the amount saved for them. Access to the saved amount by any Government in the federation is only hinged upon two events. One is when the reference commodity price falls below the predetermined limit for a period of three consecutive months. And the augmentation is to bring revenues of government to the level contained in the budget estimates. Secondly, a proportion of the savings can be appropriated for capital projects and programmes in the following year.

Considering the volatile nature of international commodity markets, as exemplified in the swing in the price of crude oil, saving for the rainy day is reasonable for Nigeria and its people. Further, considering the fraudulent nature of the ruling elite, where funds disbursed in the past have not been properly managed and duly accounted for, it would make no sense disbursing all the funds in any manner not in accordance with the FRA.

What the opponents of the ECA forget is that the augmentation the tiers of government are enjoying today is based on the savings of yesteryears. The Obasanjo government left about USD20 billion in the ECA in May 2007. As at end of December 2009, it has been drawn down to USD6.2 billion in two and half years. If the whole sums accruing in previous years had been distributed, there would have been nothing to fall back upon. The ECA should be retained and if it actually breaches constitutional provisions, that section of the Constitution should be amended.

9.5 THE CHALLENGE OF A BUDGET CALENDAR

Best practices demand that (although not constitutionally stated) budget preparation should follow an established timetable[102]. The constitutional idea that the President may present the Appropriation Bill to the legislature "at any time" in the year[103] runs contrary to best practices and has laid the foundation for the perennial late passage of budgets. Thus, budgets are presented by the President in October, November or even early December and do not get passed until the end of the first quarter of the budget year. This does not facilitate implementation and achievement of budgetary targets.

Considering that the FRA mandates the Minister of Finance to get the MTEF ready before the end of the second quarter and send it to the Federal Executive Council for consideration and endorsement[104], it makes sense to state that the MTEF so endorsed should be sent to the legislature for approval in early July and the budget to be extrapolated from it should be sent to the legislature before the end of August every year. In this way, the executive and legislature would have prepared the ground for early consideration and passage of the Appropriation Act and its implementation from the first day of January every year. This Report however does not propose the kind of consideration and passage of the 2009 Appropriation Bill done by the Senate which to all intents and purposes amounted to an abdication of legislative duty[105].

9.6 OTHER RELATED LEGISLATION

The implementation of the FRA is also linked to other legislation such as the Public Procurement Act, Finance (Control and Management) Act, Extractive Industries Transparency Initiative, etc. The challenge is how to ensure that the problems associated with one law do not spill over and have negative effects in the implementation of others. For instance, the implementation of the PPA in terms of capital budget execution may have negatively impacted on the FRA. The FRA anticipates full budget implementation for the realisation of government policy objectives. However, the poor implementation of the Public Procurement Act has ensured the year after year return of the moneys from the capital components of the budget to the Treasury. The unspent fund captured in the 2009 budget from the 2008 financial year was N217.670 billion. The fact is that a well crafted MTEF and sector strategies that cannot be implemented due to the low absorptive capacity of MDAs is bound to fail.

[102] The IMF Code of Good Practice on Fiscal Transparency- Open Budget Process.
[103] See section 81 of the 1999 Constitution.
[104] Section 14 (1) of the FRA.
[105] The Senate in consideration of the 2009 Appropriation Bill simply rushed and passed it without the expected thoroughness and scrutiny demanded by law of a legislative House.

An interesting specific case recorded in the 2007 Annual Report of the Auditor General for the Federation indicates how MDAs frustrate the realization of government policies. NAPEP ordered 5000 tricycles and spare parts at N2.4 billion out of which N150 million was meant for spare parts. The contractor was to supply the cycles within 455 days from the date of payment. Contrary to the Public Procurement Act stipulating a maximum of 15% mobilisation fee, the contractor was paid in full in May 2007 and by August 2008, only 500 units of cycles were delivered to NAPEP leaving a balance of 4500 units unsupplied and no single spare parts supplied. The VAT of 5% and Withholding Tax were not paid leading to a loss of Treasury revenue of N240 million. Thus, this sum of N240 million would be a shortfall to projected revenue thereby leading to unpredictability of budgetary funding. To compound matters, the cycles which were to be sold to poor Nigerians at a 50% discount were instead sold to a middle man, a company that will now make profit from it. This was against the presidential directive of allocating it to States. Fiscal prudence and government's policy objectives cannot be realised when deliberate steps are taken to sabotage laid down rules.

The availability of due revenue from the extractive industries will also impact on the realization of revenue forecasts in the macroeconomic framework. Discrepancies which have been noted in the EITI reports indicate that fiscal prudence cannot be achieved without the full implementation of the NEITI. Finally, FRA implementation will benefit from a regime of access to information which will enhance citizen's participation in the fiscal process. The delay in the passage of the Freedom of Information Bill by the legislature has constrained the full implementation of the FRA.

9.7 STATES STILL DRAGGING THEIR FEET ON FISCAL RESPONSIBILITY LAWS

During the Obasanjo days, the FR Bill as sent by the executive to the National Assembly attempted to regulate the fiscal affairs of all tiers of government. But considering constitutional provisions on fiscal federalism, the provisions applicable to all tiers was limited to only those issues that were contained in the Exclusive Legislative List (Items 7 and 50 on borrowing, indebtedness and debt management).

In October 2007, the Yar'Adua regime agreed with governors to replicate the FRA at the state level by enacting state level FR laws. The Federal Ministry of Finance in collaboration with development partners organised workshops for states on model FR laws and policies in May 2008. However, since then, states have been dragging their feet as only five states have so far enacted FR laws or public debt management laws. This does not show enough commitment to the FR cause.

In terms of practicing fiscal responsibility at the state level, it was reported that Governor Salidu Dakingari of Kebbi State sacked all his 478 Special Assistants in the 21 local government areas of the state. The reason for their sack was that they were too many and because of the economic meltdown, the State could not sustain them. Earlier, in the year, information had filtered out that the Governor of Adamawa State had hundreds of Special Assistants.

This is not only an undue drain on the resources of the poor states but clearly an abuse of office, fiscally impudent and calculated waste of resources. Pray, what was the job schedule and definition of these advisers and assistants? By section 196 (2) of the 1999 Constitution, the number of Special Advisers and their remuneration shall be determined by a law of the State House of Assembly. Did the legislature approve of this waste? Even though the FRA does not apply to states in respect of hiring and dismissing special assistants and advisers, this state of affairs is senseless.

Chapter Ten

CONCLUSIONS AND RECOMMENDATIONS

10.1 CONCLUSIONS

The Fiscal Responsibility Commission has been constituted but it still has no civil society representative. The Commission is still in its early days and received its first appropriation in the 2009 budget. It is yet to start serious sensitisation and capacity building activities. Its mandate on enforcing borrowing limitations is yet to receive attention due to the fact that other agencies that would facilitate this aspect of their mandate have not done their duty of collating sub-national debts. It has started enforcement activities related to ensuring that scheduled corporations pay in 80% of their operating surplus to the Consolidated Revenue Fund. However, the Commission can generate sub-national debt data through cooperation and collaboration with sister federal agencies like the Central Bank of Nigeria, Securities and Exchange Commission, Debt Management Office, etc. It can also use its powers to compel the disclosure of information if collaboration fails.

The transparency, accountability and popular participation provisions of the FRA have not been fully respected. It has been a case of a little openness and major opaque transactions. The Official Secrets Act and the Public Service Rules still trump the unambiguous transparency provisions of the FRA. Quarterly Budget Implementation Reports have not been published as and when due. The MTEF process is yet to open up to all stakeholders who have the capacity to make reasoned inputs into the process. The National Assembly through its plethora of Committees is in a position to open up the MTEF and budgetary process to popular participation. It appears that civil society organizations have not fully engaged the FRA. Even the provision liberalizing *locus standi* to sue for the enforcement of the Act has hardly been tested.

The 2009 Budget was signed into law on the 10th of March 2009 and the Accountant General of the Federation and the Minister of Finance have consistently failed to prepare and publish the Annual Cash Plan and the Budget Disbursements Schedule. The implementation of the capital budget has been very low and there are different figures from different government officials who incidentally are from the same ministry. While the Minister of Finance put it at 54.26%, the Director-General of the BOF states it to be 60.6%. Despite the poor capital budget implementation, the recurrent expenditure including overheads has always been fully drawn down.

The revenue forecasts and assumptions for the 2009 Budget were poor and resulted in a huge variation between forecasts and realized revenue. Both the oil and non oil revenue underperformed within the reporting period. The exchange rate projection missed its target while the report that inflation has been reduced to a single digit did not tally with the reality of the living experience of the average Nigerian. The Niger Delta crisis haunted oil production which led to reduced resource inflows for the implementation of the budget. Virements were proposed by the executive and approved by the legislature in a manner (from health and education to roads) not in consonance with the letter and spirit of the FRA. Various cases of misappropriation of budgetary and other funds were revealed within the year. In celebrating ten years of democracy, the House of Representatives displayed profligacy and insensitivity to feelings of Nigerians.

The year witnessed the massive depletion of funds in the Excess Crude Account with nothing concrete in terms of infrastructure or improvements in living standards to show for it. The Financial Year Act was illegally amended in default by the extension of the implementation of the capital vote of 2009 by three months while Nigeria continued to act as Father Christmas by lending money to African Governments without a proper framework of economic diplomacy that would benefit Nigerian interests in the recipient nations.

The FRA is justified in literature that it will introduce fiscal prudence which will eventually free up resources for government's greater investment in the social sector and infrastructure. However, available information indicates reduced funding envelopes for education and health. Provisions in the budgets of 2008 and 2009 and the MTEF 2010-2012 clearly illustrate the reductions. Under the MDGs, Nigeria is only on track in the goal of achieving universal primary education. It is off track in eradicating extreme poverty, reduction of child mortality and improvement of maternal health. In promoting gender equity and empowering women and the reduction and control of HIV/AIDS, malaria and other diseases, the evaluation is that it is possible to achieve targets if some changes are made. However, those changes are not forthcoming. The conclusion is that Nigeria is not using the maximum of its available resources for the realisation of the economic and social rights of Nigerians.

The Debt Sustainability Analysis indicates that our national debt is sustainable over the medium and long terms provided that it is properly managed and not arbitrarily increased. However, coming out of $36 billion dollar debt bondage, only to rake up over $26 billion in debt after three years, means that the nation learnt nothing from the previous experience. Increasing domestic debts and making provisions for debt repayment which exceed the combined budgets of education and health is clearly not the way to sustainable development. Heavy domestic borrowing by sub-national governments is also a cause for concern. With the exception of Lagos State, there have been no discernible improvements recorded by States that have raised money from the capital market.

The process leading to the MTEF 2010-2012 did not start on time and as a result, it was not concluded on time at both executive and legislative levels. The public consultation held by the minister was perfunctory while opportunities for popular inputs were limited. The deficits proposed in the MTEF were in excess of statutory limitations while reliance on oil dominated the revenue and macroeconomic forecasts. The projection was for reduced capital budgets and more money was meant for recurrent expenditure. Projections for economic growth of 2.61% in 2010, 4.89% in 2011 and 5.83% in 2012 were indicative of the disconnection between the Vision 20:2020 process and the MTEF. While the vision requires a GDP growth of at least 13% a year for its realization, the MTEF was conceived on the realistic lower end of the single digit projection.

The 2010 Appropriation is stated to be a fiscal stimulus budget that seeks to regenerate the economy, focus on government's 7-Point Agenda and the MDGs. 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 Report noted that the quantum of projected 2010 expenditure is far above the MTEF aggregates in all categories - statutory transfers, 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 (s). 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 in 2010 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 Report states that if the subsidy must be removed, the accruing funds should be channeled by legislation to the social and infrastructure sectors. Finally, the Report 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.

10.2 RECOMMENDATIONS

The following recommendations flow from the analysis in the Report.

A. The FRC: The FRC needs to speed up its activities in monitoring and enforcement, fiscal and financial studies and analysis, promotion and sensitization and information dissemination.

i). The Commission needs to invigorate the implementation of the Act through massive sensitization, awareness raising and capacity building in MDAs and the civil society. Sensitization and training session can be held for MDA personnel, legislature, banks, organized labour, CSOs, organized private sector, the media and the judiciary, etc. The website of the Commission needs to be enriched and regularly updated with fiscal information.

ii). More copies of the Act, its simplified edition, translation into local languages, stickers and posters need to be printed and widely distributed. The Commission could consider the commencement of a radio and or television programme on fiscal responsibility.

iii). The Commission should expeditiously commence the enforcement of the limitations on consolidated debts of federal, state and local governments. It should develop a mechanism for collaboration with the CBN, DMO, Securities and Exchange Commission, the banks and other financial institutions, etc for the collection of information and data on the overall debts of sub-national governments.

iv). Where requests for collaboration on sub-national debts do not yield the right results, the Commission should exercise its power under section 2 (1) (a) of the Act to *compel any person or government institution to disclose information relating to public revenues and expenditure*. Enforcement actions which deter violators of the Act may be needed to show that disrespect for the law attracts sanctions.

v). To ensure the enhancement of federal revenue from the full remittance of the operating surplus of scheduled corporations, the FRC should undertake a detailed study of the financial reports and accounts of the corporations to determine whether their declaration of profits and losses are in tandem with the provisions of the Act.

vi). The Commission should embark on fiscal studies to provide an empirical basis for its interventions. Such studies could relate to the relationship between existing laws and regulations such as the Official Secrets Act, Civil Service Rules and the transparency and accountability mechanisms of the FRA.

vii). The Commission should also be involved in promotional work by energizing section 54 of the Act through the provision of technical and financial assistance to states and local governments for the adoption of similar Fiscal Responsibility legislation. As a minimum, it should establish a National Fiscal Responsibility Forum comprising the Commission and State Fiscal Responsibility Commissions[106]. The idea is that since the Commissions at the federal and state levels are new, they would benefit much from regular exchanges and sharing of experiences at regular intervals. Meetings could be held quarterly or every six months. The Forum would also be used as a pressure point on state governments that are yet to adopt fiscal responsibility legislation to do so.

viii). A review of the rules to make the representatives of civil society, organized labour and the private sector permanent members of the Commission is imperative to ensure alternative voices in the debates of the Commission.

ix). Beyond budgetary appropriations, the Commission should explore donor and alternative funding to ensure that it has adequate funds to carry out its operations.

B. The President: The President is the overall head of the executive arm of government and the fiscal responsibility process needs leadership and direction from the presidency. The implementation of the following recommendations will facilitate fiscal responsibility.

i). The President should without delay fully constitute the Commission to include the representatives of all stakeholder groups provided in the law as members of the Commission.

ii). As the leader of the executive, ensure that all public officers (appointed and career civil servants) perform their fiscal duties on time and in accordance with the law.

iii). Agree on a budget calendar with the legislature - such a calendar will ensure that the budget process starts on time in the executive arm and gets to the legislature on time while the legislature finishes its work before their end of year recess. The calendar could have the following contours:

[106] Equivalent bodies by whatever name called.

- 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.

iv). Clear instructions given to the bureaucracy on access to fiscal information as dictated by the provisions of the Act.

v). Constitute the National Council on Public Procurement in accordance with the Public Procurement Act.

C. The FMF And BOF: The MOF and BOF coordinate budget formulation and reporting activities and should take the following into consideration.

i). 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.

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

iii). Timely preparation and dissemination of budget implementation reports. All existing reports should be uploaded to the website of the BOF.

iv). The Budget Office of the Federation needs capacity building in revenue forecasting, budget/policy costing, monitoring and evaluation of programme/policy while for spending agencies, capacity is needed in priority setting exercise; and for the cabinet and legislature in terms of reaching tough agreements and for setting national and sectoral priorities.

v). Increased allocations to education and health sectors at least, to meet the minimum international standards.

vi). For the 2010 budget and indeed future budgets:

- 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 discontinued;

- 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.

D. The Legislature: The Legislature as the assembly of the people's representatives should consider the following.

i). The Legislature should use its oversight functions to ensure compliance with the provisions of the Act. Specifically, it should ensure:

- The timely preparation of all reports due from the Ministry of Finance and the Budget Office of the Federation;
- The appointment by the President of all the members of the Commission;
- The early submission of MTEFs for its approval;
- Oversight over budget implementation in accordance with appropriation;
- Budgetary appropriations to implement the economic and social objectives of Constitution.

iii). The Legislature should expeditiously consider:

- The establishment of a Legislative Budget Office to facilitate its fiscal work and enhance its capacity;
- The establishment of a budget calendar for the early consideration and passage of the Appropriation Bill;
- Agreement with the executive on increased funding of the social sector particularly in education and health;
- The passage of the Freedom of Information Bill;
- The passage of the Fundamental Objectives and Directive Principles Reporting Bill.

iv). For the 2010 Appropriation Bill:

- 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;
- Stick to the provisions of the FRA and other laws in passing the budget into law.

C. Debt Management Office: The DMO should facilitate fiscal governance:

i). The maintenance of electronic database of the debt profile of sub-national governments will facilitate the implementation of the Act.

ii). Continued sensitisation of sub-national governments on the need for sustainable debt management practices will facilitate realisation of the objectives of the Act

iiii). Establish a Forum of Debt Management Offices comprising the federal and state DMOs to share experiences and for better debt management coordination.

vi). Requests for debt repayment should serialise the amounts borrowed, the outstanding sums, the agreed interest rates or charges, the basis of the computation of the requests in terms of outstanding capital and interests or charges, etc

D. The Attorney-General Of The Federation: As the chief law officer of the Federation, the Attorney-General should ensure the diligent prosecution of all those against whom a prima facie case of fiscal corruption has been established.

E. Civil Society: Civil society should be more proactive and consider the following:

i). Engage in detailed studies and action research for the enhancement of the implementation of the Act.

ii). Mainstream advocacy against violations of the Act and disseminate best practices.

iii). Vigorously engage the FRA process and make full use of the *locus standi* provisions in section 51 of the Act.