



SENATE OF THE FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Tuesday, 11 March, 2008

1. The Senate met at 10.20 a.m. The Senate President read prayers.
2. Votes and Proceedings:
The Senate President announced that he had examined the Votes and Proceedings of Thursday, 6th March, 2008 and approved same.

By unanimous consent, the Votes and Proceedings were approved.

3. **Message from Mr. President:**
The Senate President announced that he had received a letter from the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, which he read as follows:



PRESIDENT,
FEDERAL REPUBLIC OF NIGERIA

PRES/134

05 March 2008

*The Senate President,
Senate of the Federal Republic of Nigeria,
National Assembly Complex,
Three Arms Zone,
Abuja.*

Ex and dear brother,

**OBSERVATIONS RE: THE
APPROPRIATION BILL 2008**

I write with respect to the authenticated copy of the Appropriation Bill 2008 which has recently been forwarded to me vide Letter No. NASS/CAN/115/VOL. 21/66 dated February 20, 2008 under the hand of the Clerk to the National Assembly. I must express my sincere and warm appreciation to your good self and all the Distinguished Senators for the hard work, painstaking diligence, and sense of patriotism with which the National Assembly has considered and passed the Bill.

I am confident that our shared objective for the rapid transformation of our dear country which has been exemplified during this process will ultimately be carried over into other aspects of our national life which, constitutionally, require Executive-Legislative collaboration.

Upon a close consideration of the authenticated Bill, I wish to express my agreement with its general scope and content which are substantially in line with our vision and plans for the country in the current fiscal year. I am, however, constrained, to observe that there are certain clauses which have been introduced into the Operative Part of the Bill by the National Assembly which I must express my disagreement with for the reasons I shall outline below.

As the Distinguished President of the Senate and his Distinguished Colleagues will recall, the 1999 Constitution of the Federal Republic of Nigeria envisages that the process of presenting, considering and passing an Appropriation Act will be done within the confines of the Separation of Powers upon which our democratic system is based. Thus, under Section 81 of the Constitution, the National Assembly has the ultimate power to consider and approve Estimates prepared by the Executive Branch. However, in doing so, it should not impair the executive functions as invested in the President.

The wisdom enshrined in this Constitutional principle of 'Separation of Powers' is that the National Assembly in its discharge of the responsibilities of law making will not involve itself in carrying out or taking over the Executive functions vested in the President.

I will, however, concede that the Constitution has not left the National Assembly without appropriate oversight powers over the Executive's functions. However, these powers have been spelt out strictly in terms of the mechanisms allowed by the Constitution. For instance, Section 88 of the Constitution empowers the National Assembly, inter alia, to direct any investigation into any matter relating to the disbursing or administering moneys appropriated or to be appropriated by the National Assembly. In addition, Section 85 of the Constitution which deals with the audit of public account authorizes the Auditor-General for the Federation to submit his reports to the National Assembly.

In my view these provisions constitute sufficient supervisory mechanisms for the use of the National Assembly in ensuring that Budgets passed by it are implemented within the constraints of available resources and the need for macro-economic stability.

It is in the light of the above Constitutional principle that I must express my concern at some of the clauses which have been introduced into the 2008 Appropriation Bill by the National Assembly. For the purpose of clarity and ease of reference, I have decided to itemize the said inappropriate clauses which are in the nature of directives to Executive functionaries of Government as follows:

- (i) *The Accountant General of the Federation and the Governor of the Central Bank of Nigeria shall immediately upon the coming into force of this Act furnish the National Assembly on a monthly basis the status of the record referred to in Section 4 and Account referred to in Section 5 and all other Government Accounts.*

Comments

Statutory, the two officers referred to in this clause are expected to report to the President and not directly to the National Assembly on routine matters. Placing this additional burden of monthly report to the National Assembly on them as envisaged herein will in my opinion not only amount to a disruption of the flow of information in the executive arm but is likely to also lead to lack of harmony in the processing of such information in question to the National Assembly.

It is therefore my request that this Clause should be deleted and the statutory/normal flow of communication maintained.

I should equally use this opportunity to draw your attention to the fact that the Accountant-General of the Federation, without prejudice to the importance of his office, is actually an officer of Government who primarily reports to the Minister of Finance. I would therefore urge the National Assembly to as much as possible, resist the temptation to routinely invite the Accountant-General to brief the Assembly or engage in direct correspondence with him without reference to his supervisor, the Minister of Finance.

(ii) **Clause 7(2)**

All Accounting Officers of Ministries, Parastatals and Departments of Government who control heads of expenditure shall present to the National Assembly quarterly reports detailing the progress of implementation of the provisions of this Act and without prejudice to the other relevant Acts of the National Assembly, such return shall include funds appropriated for statutory transfers (NDDC, UBE and Debts Service).

Comments:

For the purposes of protecting the integrity of the executive powers as envisaged by the Constitution and of harmony in the implementation of Government policies as enshrined in the Budget! it is my opinion that all the Ministries', Parastatals and Departments of Government which constitute the executive arm should not reasonably be expected to make separate reports to the National Assembly on the implementation of the Budget on a quarterly-basis as envisaged herein. This is tantamount to making the National Assembly part of the executive arm or conversely making the National Assembly take-over the executive functions of government.

(iii) **Clause 7(3)**

The Accountant-General of the Federation shall forward to the National Assembly full details of funds released to the Government Agencies immediately such funds are released.

Comments:

Since the release of funds to government agencies is an integral part of the exercise of executive ■ functions vested in the President, this requirement is likely to impinge on the Executive supervision of the office of the Accountant General of the Federation. The effect of this clause is that it amounts to an undue interference and or usurpation of the executive functions, and is therefore clearly unconstitutional.

(iv) **Clause 8**

All Accounting Officers of Ministries, Parastatals and Departments of Government who control heads of expenditure shall, upon the coming into effect of this Act, commence the process of implementation and undertake actual implementation immediately funds are released by the Accountant General of the Federation.

Comments:

This clause is stating the obvious and therefore appears superfluous to me. Apart from amounting to unnecessary interference at the micro-level of executive functions, it also has the unfortunate consequence of getting the National Assembly enmeshed in the nitty-gritty of the Junctions of these executive officers.

Clause 9:

The Minister of Finance shall ensure that funds appropriated under this Act are released to the appropriate Agencies and organs of Government as and when due; provided that no funds for any quarter of the fiscal year shall be deferred without prior waiver from the National Assembly.

Comments:

While the Executive arm will strive to ensure faithful implementation of the Act, I should remind the National Assembly that Budgets are based on projections of revenue which may suffer shortfalls at any point in time especially in a largely oil dependent economy such as ours. In addition, the desire by Government to ensure macroeconomic stability places on us the responsibility to ensure that moneys are only released where there are not likely to be any damaging impacts on the economy by reason of such releases.

This explains why the Minister of Finance is empowered under the Finance (Management and Control) Act to manage all aspects of the economy including the release of funds to agencies of government from time to time in a manner that promotes prudence and financial stability.

In view of the above, it would appear to be defeatist of the intention of the Finance (Management and Control) Act if the 2008 Appropriation Bill were to insist on the automatic release of funds as and when due to government agencies at all times. I will therefore be grateful if this clause is deleted in the overall interest of our economy and our avowed commitment to prudent management of our collective resources as well as accountability in government.

(v) **Clause 10**

The Department of Government charged with the responsibility of certifying that due processes have been complied with in the processing of implementation of projects shall ensure that all processes of approval are completed within 30 days from the date of submission of request for such certification.

Comments:

This provision has the tendency of tying the hands of the Public Procurement Commission in the course of discharging its statutory duties. It is important to point out that the Commission is regulated by the provisions of the Public Procurement Act which has set out detailed guidelines as to how the Commission will discharge functions ascribed to it. The National Assembly must not be seen to be legislating against previous laws made by it. The essence of the Public Procurement Act is to provide for all matters of detail necessary for the Commission to carry out its operations effectively.

In addition, this clause errs on the side of rigidity especially in view of the immense complexity of some of the projects which have to be processed by the Commission and which require thorough scrutiny to ensure value for money.

(vii) **Clause 11**

All Accounting Officers of Ministries, Parastatals and Departments of Government who control heads of expenditures shall upon the coming into effect of this Act furnish the National Assembly on quarterly basis with detailed information on the internal generated revenue of the Agency in any form whatsoever.

Comments:

This is a routine matter that can be handled by the office of the Auditor General for the Federation in line with routine accounting practices in government. It equally falls within the scope of matters which the Public Accounts Committee can legitimately and routinely inquire into. It therefore appears to me superfluous and unnecessary to reflect this requirement in the 2008 Appropriation Bill.

(viii) **Clause 12**

All Accounting Officers of Ministries, Parastatals and Departments of Government, who control heads of expenditures shall upon the coming into effect of this Act, furnish the National Assembly on quarterly basis detailed information on all foreign and domestic assistance received from any agency, person or organization in any form whatsoever.

Comments:

The requirement under this clause is already captured under Section 162 of the 1999 Constitution as well as by the Financial Regulations. Indeed, we must remember that the Supreme Court has decided that where the Constitution has made adequate provisions in respect of any matter, there is no need to replicate such provisions in another piece of legislation.

In view of the above observations, Distinguished President of the Senate, I hope you will prevail on your Distinguished Colleagues in the Senate to delete all the above clauses as they impinge on my executive junctions as the President of the Federal Republic of Nigeria.

The above, however, is without prejudice to the desirability and the imperative of the two arms of government working together harmoniously but at the same time retaining distinctive functions without one eroding the other. This approach, no doubt, will enable us to act in concert in finalizing the process to ensure the early passage of this Act in the interest of our national economy and the welfare of our people.

Best regards,

**Signed: UMARU MUSA
YAR'ADUA**

4. Announcement:

The Senate President read a letter from Senator Umar A. Tafidan Argungu as follows:



A. Tafidan-Argungu

KEBBI NORTH SENATORIAL DISTRICT
Vice Chairman, Senate Committee on Marine Transport

10th March 2008

*The President of the Senate, Senate of the Federal Republic of Nigeria, National Assembly Complex,
Three-Arms Zone, Abuja.*

Your Excellency,

ANNOUNCEMENT AND INVITATION

It is with due regards that I write to inform you and formally invite all interested Distinguished Senators to the 53rd Argungu International Fishing and Cultural Festival scheduled to hold from 12th to 15th March 2008 in Argungu, Kebbi State.

The famous Argungu Fishing & Cultural Festival will feature Cultural and Water Sports activities, Agricultural Fair and other events as a build-up to the Grand finale Fishing Festival on the 15th March 2008.

It is my pleasure to cordially invite all interested Distinguished Colleagues to this historic event.

Please accept assurances of my highest regards and esteem at all times. Yours faithfully,

Signed:

Senator Umar A. Tafidan Argungu
Kebbi North Senatorial District

5. Presentation of Bill:

Elimination of Violence Bill 2008 (SB. 75) — *Read the First Time.*

6. Motion:

Police Mayhem in Ogaminana Town in Adavi Local Government Area of Kogi State:

Motion made and Question Proposed: That the Senate do note with serious concern that on Tuesday, 26th February, 2008, a clash between some Youth and Anti-riot policemen invited by the owners of the detained trucks, resulted to the death of over 50 people including a policeman, more than 90 residential houses, 150 markets stalls and the Local Government Education Authority Office were set ablaze by the police;

Notes also that some unarmed Youth in the area were protesting against the concession of the Itakpe Iron Ore Mining Company to Global Infrastructure Holding Ltd (GIHL), accusing the company of not operating in accordance with the agreement with the Federal Government;

Observes that a peaceful protest by the unarmed Youths, and the detention of the six trucks conveying iron ore concentrates to Port Harcourt by the Youth further aggravated a reprisal attack by the policemen to avenge the death of their colleague by an unidentified youth in the area;

Concerned that the fracas between the Youth and the Anti-riot policemen have resulted in the burning of 90 residential houses, 19 cars, 90 motorcycles and 150 markets stalls with properties worth billions of Naira destroyed when the policemen stormed the area in the night of Tuesday, 26, February, 2008 to unleash this havoc; and

Further worried that vehicular movement between the South and North of the country has been experiencing occasional disruption in the area, while commercial activities in the area have been put to a temporary halt.

Accordingly resolve that the Senate do:

- (i) **Urge** the Committee on Police Affairs to conduct a Public Hearing and establish the role played by the Police in the incident and make appropriate recommendations to the Senate within 2 (two) weeks; and
- (ii) **Urge** the National Emergency Management Agency (NEMA) to provide relief materials to the affected people and assist in rehabilitating them (*Senator Salihu O. Ohize*).

Debate:

Point of Order:

Rising on a Point of Order, Senator Ike Ekweremadu drew the attention of the Senate to Rule 70(1) (c) of the Standing Orders of Senate 2007 and moved that *the question be now put*

Question; That the question be now put, put and agreed to.

Prayer (i):

Urge the Committee on Police Affairs to conduct a Public Hearing and establish the role played by the Police in the incident and make appropriate recommendations to the Senate within 2 (two) weeks.

Amendment Proposed:

Immediately after the word "Police Affairs" inline 1, *insert* the words "National Security and Intelligence" (*Senator Patrick E. Osakwe*).

Question that the amendment be made, put and agreed to.

Another Amendment Proposed:

Leave out the words "role played by the Police in" in lines 1 and 2 and *insert* the following instead thereof:

"remote and immediate causes of" (*Senator Adeleke O. Mamora*).

Question that the amendment be made, put and agreed to. Question on

Main Prayer as amended, put and agreed to.

Prayer (ii):

Question: Urge the National Emergency Management Agency (NEMA) to provide relief materials to the affected people and assist in rehabilitating them — *Negatived*

Resolved:

That the Senate do urge the Committees on Police Affairs and National Security and Intelligence to conduct a public hearing and establish the remote and immediate causes of the incident and make appropriate recommendations to the Senate within 2 (two) weeks (**S. Res/053/08**).

7. Committee on Judiciary, Human Rights and Legal Matters:

Report on the Screening of Nominees:

Motion made and Question Proposed: That the Senate do consider the report of the Committee on Judiciary, Human Rights and Legal Matters on the screening of Hon. Justice J. O. Ogebe (North Central) and Hon. Justice M. S. Muntaka Coomasie (North West) as Justices of the Supreme Court of Nigeria and approve the recommendations (*Senator Umaru Dahiru*).

Recommendations:

"That the Senate do confirm the nominations of Hon. Justice J. O. Ogebe (North Central) and Hon. Justice M. S. Muntaka Coomasie (North West) as Justices of Supreme Court of Nigeria".

Report presented and Laid.

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report (*Deputy Senate Majority Leader*).

Question put and agreed to.

(SENATE IN COMMITTEE OF THE WHOLE)

Consideration of the Report of the Committee on Judiciary, Human Rights and Legal Matters, on the screening of Hon. Justice J. O. Ogebe (North Central) and Hon. Justice M. S. Muntaka Coomasie (North West) as Justices of the Supreme Court of Nigeria.

Nominees Recommended:

- (i) Hon. Justice J. O. Ogebe
- (ii) Hon. Justice M. S. Muntaka Coomasie

Debate:

Question:

"Will the Committee approve the nomination of Hon. Justice J. O. Ogebe (North Central) as Justice of the Supreme Court of Nigeria?" — *Agreed to.*

Question:

"Will the Committee approve the nomination of Hon. Justice M. S. Muntaka Coomasie (North West) as Justice of the Supreme Court of Nigeria?" — *Agreed to.*

Chairman to report progress.

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of the Whole, considered the Report of the Committee on Judiciary, Human Rights and Legal Matters, on the screening of Hon. Justice J. O. Ogebe (North Central) and Hon. Justice M. S. Muntaka Coomasie (North West) as Justices of the Supreme Court of Nigeria and approved the recommendations.

Question: That the Senate do approve the Report of the Committee of the Whole — *Resolved in the Affirmative.*

Confirmation of Nominees:

Question:

"Will the Senate confirm the nomination of Hon. Justice J. O. Ogebe (North Central) as Justice of the Supreme Court of Nigeria?" — *Resolved in the Affirmative.*

Nomination of Hon. Justice J. O. Ogebe (North Central) as Justice of the Supreme Court of Nigeria accordingly confirmed.

Question:

"Will the Senate confirm the nomination of Hon. Justice M. S. Muntaka Coomasie (North West) as Justice of the Supreme Court of Nigeria?" — *Resolved in the Affirmative.*

Nomination of Hon. Justice M. S. Muntaka Coomasie (North West) as Justice of the Supreme Court of Nigeria accordingly confirmed.

8. Committee on Petroleum Upstream:

Report on the Nigerian Oil and Gas Industry Content Development Bill 2008 (SB. 81)

Motion made and Question Proposed: That the Senate do receive and consider the Report of the Committee on Petroleum Upstream on the Nigerian Oil and Gas Industry Content Development Bill 2008 (*Senator Lee L. Maeba*).

Question put and agreed to.

Report Laid.

Consideration of Report deferred to another legislative day.

9. Adjournment:

Motion made and Question Proposed: That the Senate do adjourn till Wednesday, 12th March, 2008 at 10:00 a.m. (*Deputy Senate Majority Leader*).

Adjourned accordingly at 12.30p.m.

David A. B. Mark, GCON
President of the Senate