

Athena Perspective

Fresh and Deep Dimension to the News

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Budget Padding: A Stark Reminder of the Structural Weaknesses of the 1999 Constitution

Senator Abdul Ningi of the Peoples Democratic Party recently raised the alarm about the leadership of the National Assembly's unilateral insertion of projects in the 2024 budget. On Tuesday, March 12, 2024, the Senate suspended him for three months in a plenary session for alleging that the 2024 budget was padded with N3 trillion.

Days after Senator Ningi's suspension, multiple analysts and institutions have reported unprecedented insertions of projects in the 2024 budget proposals for the benefit of members of the National Assembly or their constituencies.



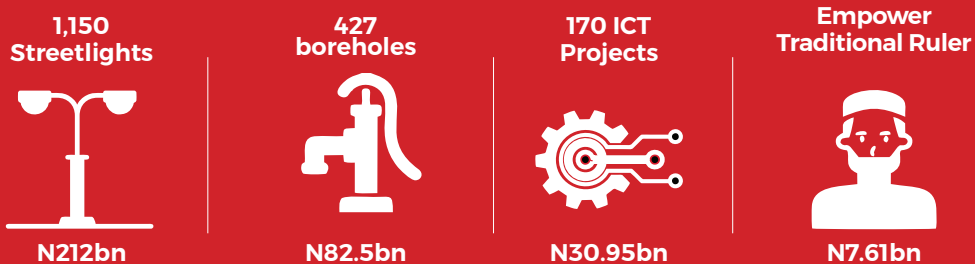
The 2.24 trillion inserted in constituencies is 28% of the total capital vote (7.72 trillion) of the federal government in 2024.

Rising Budget Padding

According to Budgit, a civic tech non-governmental organisation, the National Assembly inserted 7,447 projects, amounting to N2.24tn in the 2024 budget. To provide context to the magnitude of the budget padding, the inserted amount is equal to or higher than the total budgets of the states in these geopolitical zones (South East: N2.29 trillion, North Central: N1.89tn, and North East: N1.60 trillion).

The 2.24 trillion inserted in constituencies is 28% of the total capital vote (7.72 trillion) of the federal government in 2024. The total insertion is also higher than the combined budget of the Ministry of Defence (1.3tn) and Police Affairs (869.1bn). These two ministries are critical to the country's growing security needs and the exclusive function of the federal government.

Budgit also listed the categories (project type) of projects inserted:



1,150 streetlights worth N212bn, 427 boreholes worth N82.5bn, 170 ICT projects worth N30.95bn, and N7.61bn for the empowerment of traditional rulers.

As egregious as the above insertions appear, they are only emblematic of a global problem. National legislators are in a political dilemma of delivering value to the nation while ensuring that their electoral constituencies benefit from projects that ensure their electoral viability.

A Global Challenge

Globally, two schools of thought have emerged in the conversation about the necessity or otherwise of budget padding. However, there is a growing consensus that budget padding promotes corruption, distorts economics, and can lead to wasteful spending.

Budget padding in Nigeria can be defined as the unilateral insertion of projects

into the budget by the legislature for the political and financial benefit of members and their constituencies or special interests. It is like America's pork barrel legislation. Pork barrel politics refers to spending intended to benefit a politician's constituents in return for their political support through campaign contributions or votes.

Across the globe, countries grapple with ensuring transparent and accountable budgetary processes. Budget padding or pork barrel politics in Brazil is known as "emendas parlamentares." The Operation Car Wash scandal magnified the challenges and impact of discretionary allocation in enabling corruption in government.

The Supreme Court of the Philippines intervened in a landmark decision declaring the Priority Development Assistance Fund (PDAF) unconstitutional. The PDAF became a corruption scheme that led legislators and their accomplices to embezzle billions of pesos.

The challenge often lies in the complex interplay between different levels of government and the loopholes in constitutional and legislative frameworks that can be exploited to divert funds from essential services to less critical or even unnecessary projects.

The Constitutional Incoherence

Budget padding, from the foregoing, is not a problem peculiar to Nigeria. The first issue is the legality of insertion of projects in the national budget for non-federal government entities (local communities) and to solve social or infrastructural problems that are not under the purview of the federal government.



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Sadly, the 1999 constitution provided legal cover for this anomalous situation. The National Assembly can and have stretched their powers to include legislating on issues that ought to be the preserve of state governments.

The concurrent legislative list, as currently enacted, is a prime source of the constitutional incoherence plaguing Nigeria's federal arrangement. It provided too much latitude for the federal government to engage in both the regulation and provision of services best left to the states.

It is my view that the list is the unidentified and un-interrogated source of the leviathan federal government and emasculated states that have given rise to the widespread and growing call for "restructuring" or return to "true federalism".

The power granted to the National Assembly by the concurrent list to legislate on the items on the list beyond the powers to regulate and set standards was weaponised by federal bureaucrats and elected politicians to create the unwieldy and intrusive federal bureaucracy we have today.

For example, item 27 of the concurrent legislative list grants the National Assembly *the power to make laws with respect to university, technological, and professional education. (See notes)*. This provision should have been in the exclusive legislative list empowering the federal government to regulate and set minimum national standards for education.



Strangely, item 28 of the list provided that the power under paragraph 27 shall include the power to establish an institution for the purposes of university, post-primary, technological, or professional education. These paragraphs, like others in the list, grant concurrent powers to the federal and state governments to establish tertiary education institutions.

The federal government also regulate tertiary institutions and matters connected with it through the National Universities Commission, National Board for Technical Education, National Commission for Colleges of Education, Joint Admission and Matriculation Board, and National Examinations Council, Universal Basic Education Commission, National Commission for Nomadic Education, National Board for Arabic and Islamic Studies, Nigerian Educational Research and Development Council, National Business and Technical Examinations Board, National Institute for Educational Planning and Administration, National Teachers Institute, Tertiary Education Trust Fund and other agencies.

By the language of item 27 and 28 of the concurrent list the federal government transformed over 50 years from a regulator and minimal operator to major owner-operator and built a massive bureaucracy in the tertiary educational sector. A sector operated by the regions in the first Republic and regulated by the federal government.

While the federal government expanded its operational portfolio in the concurrent list its core functions in the exclusive legislative list, like security, suffered consistent and damaging decline in funding and deliverables.

By the provision of item 28 the federal government progressed from owning and operating four pre-independence in university, one polytechnic and two colleges before the civil war, the federal government acquired and now own and operate 43 universities, 40 polytechnics, 27 federal colleges of education and 104 federal unity colleges.



Recommendations

There is an urgent need for a constitutional amendment to rewrite the concurrent legislative list to limit the federal government to regulation and setting minimum national standards on all items not listed in the exclusive legislative list. This will halt the inordinate expansion of the federal bureaucracy.

Taking a cue from General Babangida's regime privatisation and liberalisation program, which initiated the government's withdrawal from business enterprises, the federal government should embark on a process of divesting itself of the establishment and operational functions in the concurrent list.

In the immediate, there is an urgent and moral need, after due consultation with the National Assembly, for an executive bill to amend and revisit the 2024 Appropriation Act. The bill should seek to reverse the current project insertion and diversion of much-needed funds to difficult-to-track local projects of doubtful value with little or no alignment with the objectives of the 2024 budget.



The President should engage the National Assembly to stem the unchecked growth of budget padding and the distortionary impact on budgeting, project delivery and widening national distrust of government.

The Executive and Legislative arms should dialogue and reach a consensus on the process, procedure, implementation and monitoring of constituency projects.

There is need for a holistic redefinition of constituency projects if it is to remain a feature of our budgeting process, to achieve transparency and to gain alignment of legislators in need of tangible deliverables to their constituencies.

The President should also direct federal agencies to refrain from implementing projects not under their mandate and end the current system of budget distortion at the appropriation stage.

Finally, the federal government confronted with multiple existential challenges should refocus on growing the economy, securing the country, and restoring confidence in its capacity to manage national diversity and foster a sense of inclusion and well-being.



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<https://fastercapital.com/startup-topic/Pork-Barrel-Spending.html>

¹Constitution of The Federal Republic of Nigeria 1999 (as Altered 2023), 1999) Concurrent List

27. The National Assembly shall have power to make laws for the Federation or any part thereof with respect to university education, Technological education or such professional education as may From time to time be designated by the National Assembly.

28. The power conferred on the National Assembly under paragraph 27 of this item shall include the power to establish an institution for the Purposes of university, post-primary, technological or professional Education.

29. Subject as herein provided, a House of Assembly shall have Power to make laws for the State with respect to the establishment Of an institution for purposes of university, technological or Professional education.

30. Nothing in the foregoing paragraphs of this item shall be construed so as to limit the powers of a House of Assembly to make Laws for the State with respect to technical, vocational, post-primary, Primary or other forms of education, including the establishment of Institutions for the pursuit of such education

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