

**NEW FRONTIERS TO LEGISLATIVE DRAFTING: PLAIN LANGUAGE IN  
PERSPECTIVE**

**BY**

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**BEING A DISSERTATION SUBMITTED TO THE NATIONAL INSTITUTE FOR  
LEGISLATIVE AND DEMOCRATIC STUDIES/UNIVERSITY OF BENIN  
(NILDS/UNIBEN) POST GRADUATE PROGRAMMES IN PARTIAL  
FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A MASTERS  
DEGREE IN LEGISLATIVE DRAFTING (LL.M)**

**MAY, 2023**

## DECLARATION

I declare that this dissertation titled "**New Frontiers to Legislative Drafting: Plain Language in Perspective**" is entirely my work and has not been previously presented either in part or whole to this university or any other academic institution for any degree or programme, and that all the sources used have been duly acknowledged by proper references.

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## CERTIFICATION

I hereby certify that this dissertation titled “**New Frontiers to Legislative Drafting: Plain Language in Perspective**” was carried out by Anuli Ifeyinwa Onwuteaka with Matric No-PG/NLS/2015026 under my supervision. It is further certified that this dissertation has met the minimum acceptable standard of one of the requirements for the award of Master of Laws (LLM), University of Benin/ National Institute of Legislative and Democratic Studies.

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## **DEDICATION**

This Dissertation is dedicated to Barr. Ifeanyi Okechukwu (Husband) and Col. Sam Onwuteaka (Rtd) (Father).

## **ACKNOWLEDGMENTS**

I would like to express my deepest appreciation to my supervisor, Dr. Samuel Oguche, for his enormous contributions to this work. Many thanks too to my amiable lecturers who through their effort brought about this success.

I thank my dear Father (Col Sam Onwuteaka (Rtd) for his constant support and love even when research seems to prove difficult. His encouragements always pull me through. To my family, my dear husband, Barr. Ifeanyi Okechukwu, many thanks for your unfailing support. Your prayer for me sustained me through this project.

Finally, I thank God Almighty for seeing me through all the difficulty and sustaining my health in this economic climate of stress and challenges. I have experienced your guidance daily and it is only you that kept me through my degree years. Your love is never failing.

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## **LIST OF ABBREVIATIONS**

CAMA	-	Companies and Allied Matters Act 1990
CFRN	-	Constitution of the Federal Republic of Nigeria 1999
FCT	-	Federal Capital Territory Abuja
FCC	-	Federal Character Commission
GNL	-	Gender-Neutral Language
MOJ	-	Ministry of Justice
NASS	-	National Assembly
NGO	-	Non-Governmental Organization
SSB	-	Social Security Bill 1990
UK	-	United Kingdom
WTO	-	World Trade Organization

## ABSTRACT

The evolution of legislative drafting has witnessed a transformative paradigm shift, notably through the integration of plain language principles. This abstract provides a comprehensive exploration of the emergence and implications of plain language in the context of legislative drafting. Plain language in legislative drafting represents a conscious departure from traditional legalistic terminology, endeavouring to enhance the accessibility and comprehensibility of laws and regulations. The primary objective is on achieving clarity, simplicity, and transparency in the language utilized within legal texts. This departure stems from the realization that intricate legal verbiage can impede the understanding of laws for the very individuals they are designed to inform.

This paper expatiated on the drafting standards using Turnbull Four-Fold Strategy. The study assesses the drafting based on clarity, precision, consistency, and coherence. This research adopted a doctrinal approach using textbooks on legislative drafting and other scholarly published articles, Newspapers and other online media, amongst others. The research identified the challenges impeding application of plain language in Legislative Drafting.

Findings from the study showed that the heavy reliance on precedents constitutes a major setback to plain language drafting in Nigeria. Most of the precedents being adopted are manifestly defective in themselves, thereby giving rise to a situation of continued complex drafting standards

This research concluded by recommending the adoption of plain language as it mitigates the risk of misinterpretation and legal disputes, consequently contributing to a more equitable and just legal framework.

# CHAPTER ONE

## INTRODUCTION

This discourse on Legislative drafting and its plain language perspective is set on the backdrop of a brief background to the study; the construction of the research problem, research aim and objectives, research questions, scope/delimitation of the study, research methodology and ultimately, a synopsis of Chapters. On this note, it proceeds.

### 1.1 Background to the Study

Law is the bedrock of every state, and every state needs law(s) to subsist, no matter how small that state is.<sup>1</sup> Without it there would be a complete societal disorder and insubordination within such lawless state. For a law to be effective, it must be communicated in the language it is understood. Law is regarded as the instrument that spearheads the affairs and development of a nation, socially as well as the physicality of a society. For example: environmental issues, traffic problem, gender issues, alcohol, and drug abuse and so forth.<sup>2</sup> Thus, just as development could be attributed to the successes of a well drafted law that governs a state, in same light, the defects in society can be corrected by enacting a law or amending an already existing law. Legislative drafting as the topic entails, is a theoretical and ideological understanding of a law, which is influenced by the understanding of laws in the traditional and modern societies and spearheaded the decision of the legislative drafters.<sup>3</sup> Hence, this theory is to uphold the spirit of the language structure and the influence of cultural practices, and moral norms; pre-colonization and post-colonization approach of drafting laws.<sup>4</sup> This research set out to explore the extent to which the plain language

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<sup>1</sup> Charles B. Davison, 'The Rule of Law is our Legal Bedrock' (*HeinOnline*, December 2006) <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/lanow31&=18id=&page=>> accessed 18 November 2022.

<sup>2</sup> *Ibid* n1

<sup>3</sup> Dial Dayana Ndima, 'Reconceiving African jurisprudence in a post-imperial society: the role of Ubuntu in constitutional adjudication' [2015] *The Comparative and International Law Journal of Southern Africa* 359,380

<sup>4</sup> *Ibid*

choices/structure is used in drafting the legislation as opposed to the ancient times and how the societal values are embedded in the legislative drafting.

Legislation should have the ability to speak to the people whose lives are affected by its content. This is the only means through which citizens are told what are expected of them and what not. This is seen as the authoritative rule that governs the affairs of a state. Thus, for a legislation to fulfil its purpose, it must be efficiently communicated to the people in the language they comprehend. Communication is only successful when the object of communication is effectively communicated. Hence, the means of drafting a Nigerian legislation(s) and the feedback from the people; ‘ordinary man’ who could only read and write, cannot grasp the crux of the legislation, this begs for the need that the legislation should be adjusted to enable them to understand and apply the framework of the law. This has seen to be a failure on the part of the drafters.<sup>6</sup>

The focus of this research will be on Nigeria and with comparative analogies where appropriate. Also, the focus area is mainly on the new ways of drafting legislation, particularly with the languages used; the process of making a law and the arm of government entrusted with the responsibility of making the law. Also, this research focuses on the Constitution of the Federal Republic of Nigeria which is the ground norm on which all laws derive their sources from and thereafter focuses on other laws and how plain language is necessary and has influenced the drafting of the legislations. This will be focusing on legal

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<sup>5</sup> WILLIAM IDOWU, ‘African Philosophy of Law: Transcending the Boundaries between Myth and Reality’ <<https://www.brunel.ac.uk/creative-writing/research/entertext/documents/entertext042/William-Idowu-African-Jurisprudence-Transcending-the-Boundaries-between-Myth-and-Reality-an-essay.pdf>> accessed 14 August, 2022.

<sup>6</sup> Tonye Clinton Jaja, “Strategies for Improvement of the Quality of Bills and Legislative Drafting in Nigeria” (ir.nilds.gov.ng) <<https://ir.nilds.gov.ng/bitstream/handle/123456789/392/Strategies%20for%20Improvement%20of%20the%20Quality%20of%20Bills%20and%20Legislative%20Drafting%20in%20Nigeria.pdf?sequence=1&isAllowed=y>> accessed 10th July 2023.

doctrines, relevant statute and cases in respect of legislation interpretations. This will be done in comparison with other laws especially those that influence the Nigerian Laws.<sup>7</sup>

### **1.2 Statement of the Research Problem**

The comprehensiveness and the ability to grasp the legislations in Nigeria has proved abortive. The ordinary man lacks the ability to dictate the content, more of encapsulating the basic requirements of the law. The reason for a clear and understandable legislation is to promote the spirit of democracy and the rule of law as prescribed by Hans Kelsey, who that *'The law, is basically a scheme of interpretation. Its reality, or objectivity, resides in the sphere of meaning; we attach a legal-normative meaning to certain actions and event in the world'*<sup>8</sup>

The essence of making laws is for it to serve as a guide to the people. Thus, the layman's understanding of the law is put to test. Laws should be drafted in the simplest of language so that the purpose the legislator aim to achieve is not lost in the process of primitive language use, which could be only understood by legal minds and educationalist. However, the use of primordial language such as 'null and void' often leads to poor arrangement and structure due to the inconsistency and elaborated mode of expression of the law. This makes it difficult for the people who the law is supposed to guide, to understand the content of the law not to talk about abiding by it.<sup>9</sup>

### **1.3 Aim and objectives of the Study**

This study clearly amplifies the need for plain language as the modern way for drafters in legislative drafting and this will, in all sincerity does not address all the errors in legislative drafting in Nigeria, but it ensures that legislation is drafted in plain language, communicated to a wider audience and facilitates correction of the errors which are often made in legislative

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<sup>7</sup> MM Asprey, Plain Language for Lawyers (3rd edn. Federation Press 2003). 13

<sup>8</sup> Andrei Marmor, "The Pure Theory of Law", *Stanford Encyclopaedia of Philosophy*, (Fall 2021 Edition), Edward N. Zalta (ed.), <<http://plato.stanford.edu/archives/fall2021/entries/lawphil-theory/>>

<sup>9</sup> Ibid n 6

drafting causing ambiguity, losing its precision, and accuracy. There are some basic rules that a drafter must follow, but with the use of primitive language structure, it is highly likely that one will fall a victim to making a law that has no relevance or in the process of comprehension could mislead anyone in this present era and the Nigerian jurisdiction. The various arms of government; Executive, legislative and judiciary would be benefactors of the use of plain language because interpretation becomes easier in executing their official capacity. Also, this paper affirms that the plain language in perspective to legislative drafting will be beneficial not to the layman alone but the advancement of legal studies.

The objectives of this research are to:

- a) Unearth the modalities of achieving plain language in legislative drafting;
- b) Examine the advantages of drafting laws in plain language;
- c) Identify the challenges militating against plain language drafting; and
- d) Make recommendations for ensuring legislative drafting in plain language.

#### **1.4 Research Questions**

1. How does a drafter achieve plain language in drafting legislation?
2. What are the benefits of plain language in legislative drafting?
3. What are the challenges militating against plain language drafting?

#### **1.5 Scope/Delimitation of Study**

Preliminary literature review showed that more focus has been given to understanding and modelling of plain language to fit into several legislations of commonwealth countries and the need for it in legislative drafting. This shows various strengths because there is a need for the development of drafting Nigerian legislation in plain language. This has been written by several other individuals in a wide range. However, my focus would be on the issue that plain language is necessary and beneficial to legislative drafting, in addition to this already

researched knowledge several articles will be used as supporting evidence. Thus, the question that would make my paper relevant and beneficial to the topic, is that it focuses on Nigeria and question the need for legislative drafting to be written in plain language to meet the understanding of a layman without losing its content.

This study is limited to drafting legislation in the Federal government sphere in the Nigerian jurisdiction. In line with this discussion, an attempt would be made to explore how drafting legislation in plain language will affect the new generation and the way they draft as well as compose their articles, and to see if the need to draft in out-dated language just to prove a linguistic point will be necessary. Also, the idea of customary practices will be addressed.

### **1.6 Significance of the Study**

The findings and conclusion of this research will be significant in several ways to the people at large and the legal world because there might be actual changes regarding the need to draft legislation in plain language and there might be a change in a large group of Nigerian being able to read and comprehend the legislation once drafted in plain language.

1. This research will serve as a reference material both for students and other researchers, who may have need for this information and documentations on this area of academic studies and just as an informative article to people who seek knowledge to enhance their career.
2. This research will also be helpful to other legislative drafters and several arm of the government in their drafting and execution of the law in their political offices, executing their official duties and law will be more informative.
3. The finding will also pave way and offer the citizens to air their opinion/views on any matter stipulated in the law or where the laws are being reformed they would have a say on what it should be or not be because there is understanding as a result of plain

language in sight. This paper and findings will let them know that it is possible to share their opinion on the way the laws are affected particularly on matters parting to their rights.

### **1.7 Research Methodology**

This research adopts the doctrinal methodology. Doctrinal research is the research into doctrines, involving statutory provisions, available literature and case law by application of the power of reasoning.<sup>10</sup> It is the research into law as a normative science; a science which lays down norms and standards for human behaviour in a specified situation or situations enforceable through the sanctions of the state.<sup>11</sup> Consequently, this research would place reliance on both primary and secondary source materials. Furthermore, secondary sources such as textbooks, articles in learned journals, papers, periodicals, newspapers, internet materials, and reports presented at seminar and workshops, press releases, commissioned reports and so forth will also be used. The doctrinal research is the preferred approach because of the availability of information of plain language drafting.

### **1.8 Synopsis of Chapters**

This research is divided into five unequal chapters that will enable it to achieve its aim. Chapter contains the scope and methodology, research questions and objectives that this research aims to attain, the significance of this research to the masses at large and the legal profession. Continuously, chapter two will address what legislative drafting is in Nigeria (the arm of government that is burden with responsibility of drafting the legislations), accessibility of legislation and the audience that the legislation seeks to serve. Chapter three has to do with the understanding what plain language is and the essence of plain language in legislative drafting. And chapter four entails the analysis chapter where literature review will be used as supporting documents to address the topic and evaluating the four-fold strategy to attain success of this paper. Chapter five will discuss the benefits of plain language in Nigeria. And the last chapter will give the conclusion and recommendations of this paper. Thus, the entirety of this paper will be divided into six chapters.

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<sup>10</sup>Gasiokwu, MOU, *Legal Research and Methodology*, (Chenglo Limited 2007) 13

<sup>11</sup>*ibid*

## **CHAPTER TWO CONCEPTUAL FRAMEWORK AND LITERATURE REVIEW**

This section reviewed extant literature on Legislative drafting and Plain Language. It also captures the theoretical framework considered appropriate and suitable for the study.

### **INTRODUCTION**

The subject is legislative drafting and its plain language perspective and to engender clarity and understanding, it is important to examine related concepts, the theoretical foundations of the study and also the works of other writers as relating to the study. The aim is to aid the vitality of drafting legislations in simple/plain language. It is important to highlight the processes and steps involved in legislative drafting in Nigeria. Specifically, this chapter will shed light on the works of VCRAC Crabbe, who is an authoritative figure in legislation and legislative drafting.<sup>12</sup>

#### **2.1 Conceptual foundation of legislation in Nigeria**

The Law governs the people, and the constitution of Nigeria is the ground norm of various laws in Nigeria. There are four distinct legal systems in Nigeria. This includes English law, Common law, customary law and Sharia law. The English law derived its source from the colonial era in Nigeria, whilst the Common law is a development from the post-colonial era till date in Nigeria.<sup>13</sup> There are three major arms of government through which the government distributed its functions; the Executive, Legislative and the Judiciary arms of government. The legislative arm of government is tasked with the burden of making the laws that governs the citizens and particularly, legislation for the Federation is made by the National Assembly. This power of the legislative arm of government to make laws is

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<sup>12</sup> VCRAC Crabbe, Crabbe on Legislative Drafting (2<sup>nd</sup>edn. Lexis Nexis 2008) 17

<sup>13</sup> VCRAC Crabbe Legislative Drafting (Cavendish publishing 1993) 1-3.

embedded in section 4(1) of the 1999 Constitution of the Federal Republic of Nigeria (as altered).<sup>14</sup>

Legislation could be Acts, Ordinances, Decrees, Edicts, Laws and even the Constitution of the Federal Republic of Nigeria. To understand the various forms that a legislation could take, one must understand as stated above that, the Constitution, which is also referred as a legislation, is the source from which other laws derive its authority. Acts are laws made in the open legislative house feasted by several legislatures during a democratic debate or disposition of open statements. Prior to independence, there are ordinances made that govern the people. Ordinances are laws made by the legislature before 1<sup>st</sup> October, 1954 when Nigeria was introduced to Federalism. Decrees are federal laws made during the military era and Edicts are laws made in the state level frying military regime. It is pertinent to note, as stipulated in the case of *A.G.F v. Guardian Newspaper Ltd and Ors*,<sup>15</sup> it was decided by the court that for a decree to be enacted, the valid signature of the military Head of State needs to be embedded in it. Also, subsidiary legislation are laws made by bodies other than those given the statutory mandate to make laws.<sup>16</sup> This delegated legislation is valid due to enabling statutes. This could be seen in section 248 of the Constitution which encapsulates that the President of the Court of Appeal is empowered to make rules to guide the practice and procedure of the Court. These also cut across to various head of court on similar provisions.<sup>17</sup> This delegation of legislation, is initiated for effective governance, it will be prudent to state that, the sole legislations and the body with the authority to make laws, can make laws for the whole Nations without omission of certain laws on their part. Thus, for the

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<sup>14</sup> s.4 (1) Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>15</sup>*A.G.F v. Guardian Newspaper Ltd and Ors* (1999) 5 S.C.N.J 324.

<sup>16</sup> Florence Masajuwa, 'Legislation as a Source of Law and Statutory Interpretation (edouniversity.edu.ng) <[https://www.edouniversity.edu.ng/oerrepository/articles/nigerian\\_legal\\_system\\_part\\_3.pdf](https://www.edouniversity.edu.ng/oerrepository/articles/nigerian_legal_system_part_3.pdf)> accessed 10 July 2023. 4

<sup>17</sup> S. 248 Constitution of the Federal Republic of Nigeria 1999 (as amended).

entire public life to be inclusive in law, there are people, like the judiciary with particular knowledge that could address those issues as well as create legislations to govern those issues.

Per the words stipulated by Justice Crabby; “*Government needs legislation to govern*”<sup>18</sup> This is important for it acts as a guidance to effective deployment of their sworn duties to the people. However, for the duties to be effectively accounted for, the people need to understand the content of the legislation to enable them hold the government accountable when they are found wanting of breaching the provisions of the laws. Only when there is accountability in government can the economic, cultural, political and social policies be achieved in a given Nation. Thus, the legislations should be drafted in a plain language. Per the essence of this dissertation, legislation is referred to the Acts of Parliament and the laws that are made subsequently by them.

## **2.2 The historical development of legislative drafting**

The development of legislative drafting has gone through several stages of improvement over the centuries.<sup>19</sup> This has all been with the aim of achieving plain language in legislative drafting for better apprehension by the people it aims to govern.<sup>20</sup> Drafting of legislation has been a practice that was inherited from our colonial masters. It has its origin from the English practice thus common law practice.<sup>21</sup> There are eight stages which development in legislative plain language has taken over the years. Firstly, there’s the early drafting, the 19<sup>th</sup> Century development, colonial developments, 19<sup>th</sup> Century improvements, subsequent development, Mid-20<sup>th</sup> Century developments, principled drafting, and plain language movement. These are all era taken different phases to ensure that plain language in legislative drafting is an achievable goal and a continuous development process.

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<sup>18</sup>VCRAC Crabbe, *Crabbe on Legislative drafting* (2<sup>nd</sup>ed, Lexis Nexis, 2008) 17 accessed 11 October 2022.

<sup>19</sup> Michael S. Firman, Plain English Statutes Long Overdue or Underdone? 7 LOY, CONSUMER L. REP. 103, 107 – 08 (1995).

<sup>20</sup> Legislative Drafting in Hong Kong, <<http://www.doj.gov.hk/eng/public/pdf/ldhkv2e.pdf>> accessed 20 November 2022. 16

<sup>21</sup> Reed Dickerson, *The Fundamentals of Legal Drafting*, (Little Brown and Company, 1965) 3.

### 2.2.1 Early Drafting

The drafting of early legislation in England from the 15<sup>th</sup> Century was largely the sole responsibility of the judges and conveyancers. This is influenced by the deeds and court instruments at that time. In the early drafting eras, parliament sought after specifying in detail, and repeating at length the matters that ought to have been covered by rules drafted in extensive terms.<sup>22</sup> The effect of this is that amateur readers found the content of most statutes incomprehensible. A major problem was that it suffered from deficit in structure, inconsistency in language arrangement and many matters that ought to have separate meaning and definition were compressed into one statement naming it verbose and unreadable. The statutes were written in legalistic languages like ‘null and void’ which is obviously a repetition, just to place emphasis on the subject matter discussed.<sup>23</sup>

### 2.2.2 19<sup>th</sup> Century Development

This era focused more on the legislative drafting. This was the period where drafting errors identified was seen as an issue that needed to be addressed. A more suitable style was deliberated to discourse the shortcoming in legislation. This bore the office of ‘Parliamentary Counsel’ in United Kingdom in 1869. This period saw four influential persons who frontline the development and changes needed in legislation. One is George Coode a lawyer in private practice, with the responsibility of reviewing poor laws which birthed his paper; *On Legislative Expression* (1845 & 1852)<sup>24, 25</sup> and also, Sir Henry Thring who was also a probate lawyer drafted for the Home Office from 1861 and when the office of Parliamentary Counsel was founded. This theorist and more made much improvement in common law drafting in the

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<sup>22</sup> Ibid

<sup>23</sup> Lance N. Long & William F. Christensen, Does the Readability of your Brief Affect Your Chance of Winning An Appeal? 12 J. APP. PRAC. & PROCESS 145, 148-151 (2011).

<sup>24</sup> George Coode, ‘*On Legislative Expression*’ An Explanation by Roderick Rampage (1 March 1852) accessed 20 October 2022.

<sup>25</sup> Ibid

19<sup>th</sup> and early 20<sup>th</sup> century.<sup>26</sup> The diversity in quality of the different drafters within departments led critics, including Jeremy Bentham, to advocate a centralized drafting agency which would also be able to ensure that legislation proposed by departments was consistent with the existing body of statute law. After the 1830s two draftsmen, Arthur Symonds (from the Board of Trade) and later Henry Thring (from the Home Office) were leading advocates of setting up a centralized agency, but it was not until 1869, under the pressure of the mounting costs of paying draftsmen and hiring extra help to keep up with a growing burden of legislation, that the Parliamentary Counsel Office was set up with Sir Henry Thring as its first official.<sup>27</sup>

### 2.2.3 Colonial Development

Drafting was often undertaken by law officers who had gained their training in English law, and who undertook English drafting practices. Some improvements in drafting occurred independently in colonial jurisdictions and by private lawyers as stated above, although they were not usually followed in England. For example, the Indian Penal Code 1860,<sup>28</sup> Indian Evidence Act 1872,<sup>29</sup> Indian Contract Act 1872,<sup>30</sup> Code of Civil Procedure, Code of Criminal Procedure 1898,<sup>31</sup> demonstrated that a complete body of common law could be reduced to lucidly written rule that were accessible to those without a legal training. The drafters of that time also devised ways which enabled legal principles to be enunciated and, by the addition of explanatory material and examples, for their application to be understood. Neither of these trends was enforced in the 20th century.<sup>32</sup>

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<sup>26</sup> Kathleen E. Vinson, *Improving Legal Writing: A Life Long Learning Process and Continuing Professional Challenges*, 21 *TOURO L. REV.* 507, 517 (2005).

<sup>27</sup> Edward C. Page, 'Their Word is Law: Parliamentary Counsel and Creative Policy Analysis' (London School of Economics and Political Science, 2009) Sweet & Maxwell Swiss Cottage London. <<https://personal.lse.ac.uk/Page/Papers/PL%202009%204%20E.%20Page%20offprint.pdf>> 792

<sup>28</sup> Indian Penal Code 1860

<sup>29</sup> Indian Evidence Act 1872

<sup>30</sup> Indian Contract Act 1872

<sup>31</sup> Code of Criminal Procedure 1898

<sup>32</sup> *Ibid* n 20

#### 2.2.4 19th Century Improvements

This century saw the assertive foundation upon which legislative drafting in plain language was provided by Coode. As a result of his tenacity, theoretical footings to drafting practices were provided for the first time in the legal history. An approach for composing legislative sentences, asserting that each should contain standard components, excluding the verbosity and bulkiness and showing how they should be consistently deployed in a simple and well understood manner.<sup>33</sup>

Coode drafting suggestions cut across various methods. They included: the basic feature in drafting are ‘*simplicity and directness*’ of expression. Common patterns of English should always be used. Common in the sense that, it is not out of the imagination and regularity of the average reader. Two, sentences should follow each other in a logical sequence, for example, in accordance with the chronological order of the events to which they relate. Thirdly, different rules relating to different persons or different events should be addressed and segmented in a different sentence to avoid clumsiness in language construction. Also, artificial, or arbitrary definitions of terms should be avoided. Definitions should challenge attention by being placed before, not after, the matter to which they relate. Terms that are defined should be identified, when used in legal rules, by some distinguishing mark. Provisos should be avoided. Their only legitimate use is to create an immediate exception to a general proposition.<sup>34</sup> There are various other set of rules that Coode set that have shaped the betterment of drafting in our legal sphere today. The above mentioned are quite a few that were advanced and improved on over the periods by of other theorist and lawyers.

#### 2.2.5 Subsequent Developments

In the same 19<sup>th</sup> Century, other drafters were sourced and Lord Thring in particular, pioneered a number of practices that complement the rules wet by Coode's proposals. Though

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<sup>33</sup> Ibid n 22

<sup>34</sup> Richard C. Wydick & Amy E. Sloan, *Plain English For Lawyers* (6<sup>th</sup> ed. 2019)

they were not totally different from Coode, but were necessary improvement that must be noticed and attributed to the development of plain language. These included the proposition that legislative sentences should be short, with only one sentence to a section, however, if there be need for a long sentence to describe the legislation, it should be divided into subsections. This was expedited by the statutory permission in 1850 to use sections and subsections. There should be a unity of purpose between the subsections of the same section, the idea and train of thought, should flow into the subsection and nothing something entirely different. When an Acts contains a lot laws, it should be divided into Parts and headings. In drafting the law, the simplest language found in ordinary composition should suffice and be adequate for composition. Latin terms and unnecessary technical expressions should be avoided. Terms like – ‘Null and void’ which practical means the same thing but because of emphasis it was used then but now it is archaic in drafting and legal writing.<sup>35</sup> These were some of the additions that were made on how legislation should be crafted to enable it to become simpler and more relatable to the average individual/citizen that picks up legislation to read.

#### **2.2.6 Mid-20<sup>th</sup> Century Developments**

During this period, the common law jurisdiction, in its entirety, deviated from the manner in which drafting have been stipulated by the theorist, at least in the second half of the 20th century. It is seen that despite the effort to make the legislation amendable and palatable for citizens, the same blunders resurfaced, such as long-winded and complex statutes using compressed and complex sentences, elaborate detail, poor structure, and obscure language and terms. This undoubtedly could be attributed to the increasing demand for wide-ranging legislation to regulate new happenings, thereafter, introduce fundamental social change. These

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<sup>35</sup> Kathleen E. Vinson, *Improving Legal Writing: A Life Long Learning Process and Continuing Professional Challenges*, 21 *TOURO L. REV.* 507, 517 (2005).

shortcomings had a little less impact in some Commonwealth jurisdictions, where sound practices developed by Attorneys-General during the colonial era.<sup>36</sup>

### 2.2.7 Principled Drafting

In other to enforce the new trend, proposition has been put forward that legislation should move away from the traditional styles. So, it has been urged that greater prominence should be given to statements of principle, rather than a detailed elaboration of rules to regulate the legal relationships of those concerned with or affected by the legislative scheme.<sup>37</sup> The effect of this method is that there will be fewer details in the legislation as to responsibilities of those affected, but in consequence that detail might have to be settled by the courts or by Executive direction or decision.<sup>38</sup> Judges have the authority in the course of executing their role as judiciaries in court cases, where there is no provision on the law that could be applied to the particular case they are presiding over, they have the authority to give a ruling that will be binding on the individual, and thus, this leads to precedence. When there is a make laws in respect of cases and procedure of court, thus it will not be out of their power to be doing this. This could lead to a reduction in the authority of the Legislature, which constitutionally and traditionally is the body expected to settle such matters but not to forget that the legislators cannot in all honesty, make laws to cover all areas.

### 2.2.8 Plain Language Movement

This approach towards drafting was not founded on its own but it has its root founded in George Coode philosophy of legislative drafting. One which engorged the breaking down of sentence structure and using simpler language in drafting to enable the reader or the people which the legislation aim to govern, to simply understand the context of the legislation. It is seen to be prominent in Australia<sup>39</sup>. The plain language movement seeks clarity amongst le-

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<sup>36</sup> Ibid

<sup>37</sup> Ibid n 34

<sup>38</sup> PLAINLANGUAGE.GOV, <<https://www.plainlanguage.gov/guidelines/organize/>> accessed 18 Oct 2022.

<sup>39</sup> Bryan A. Garner, *Legal Writing in Plain English* (2d ed. 2001).

gal documents, especially those which will be in usage and direct contact with the public. The most prominent case of plain language taking effect in the country is the “**Law Reform Commission of Victoria**”.<sup>40</sup> The commission created a *Manual for Legislative Drafters*. The aim of this manual is to serve as a guide to legislative drafters to methods and procedure which communicated their message effectively and efficiently.

### 2.3 Literature Review

The subject of legislative drafting and its plain language movement has elicited attention resulting in diverse contributions. Present inquiry elaborates on the historical trends in legislative drafting by leveraging the work of *David Mellinkoff* regarded as the Father of legislative drafting. In his book, the ‘Language of the Law’ (1963), the several stages of legislative drafting up to the dawn of the plain language movement is elaborated to the benefit of this dissertation. The work of Tanimu titled “Contemporary Legislative Drafting: Plain English Principles”<sup>41</sup> is equally instructive to dissertation as it elaborates on key moments towards plain English legislative drafting, relevant principles to wit: avoidance of traditional form of expression, use of well known rules of simple drafting and aids for enhancement of understanding, including careful considerations of structure (design and layout of legislation), all of which are important themes in the dissertation. As put forward in the work, the three types of structures discussed- telescoping, chronological and thematic, must remain amenable to accessibility to the audience, a key focus of the plain English movement in legislative drafting.

In the work “Legislative Drafting: a New Sub-Discipline of Law is born” by Helen Xanthaki,<sup>42</sup> there is a rendition that legislative drafting is itself a stage in the policy process of government comprising of other actors and it is necessary for the representation of a

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<sup>40</sup> Law Reform Commission of Victoria Act 2000

<sup>41</sup> Adamu Idris Tanimu, ‘Contemporary Legislative Drafting: Plain English Principles’ IJOCLEP 2(3) 2020

<sup>42</sup> Helen Xanthaki, ‘Legislative Drafting: A New Sub-Discipline of Law is Born’ in IALS Student Law Review, vol 1, issue 1, 2013, pp57-70

multiplicity of disciplines in the drafting process. It would be the concern of this dissertation to elaborate on collaboration techniques for effective legislative drafting in Nigeria.

The work of *Rabeea Assy*, “*Can the Law Speak Directly to its Subjects? The Limitation of Plain Language*”, to the benefit of present inquiry advances the foundation principle of the ‘Plain English Movement’ to the effect that drafting is to speak directly to the people. There is need for the language of legislation to be relatable to the jurisdiction and the people it aims to govern. As such, beyond the direct access and affordability of law to lay people, society will also be well served if the people understand the content of the law.<sup>43</sup> This thought stream is obviously in tandem with the effort to make legislation in Nigeria clearer, understandable and accessible. Moreover, if legislation is to pander to jurisdictional realities, a necessary gap filled by the effort of present inquiry is that it articulates the Nigerian experience in legislative drafting and charts new frontiers for it, as predicated on the benefits of the plain language movement, which go beyond legal drafting in obsolete orthodox languages that engender misunderstanding or ignorance of the law, the risk of noncompliance and of rights being in jeopardy, to promote the effective communication of legislation to the targets of legislation. There is thence a new emphasis on how the law is arranged, presented and on how the consumers of the law understand them. This effort drives the need to transition Nigerian legislation from the use of a lot of Latin, French terms or idioms and ancient phrases, to the use of simple and usual English equivalents and as such abhors the religious practice by the Draftsman of developing legislation in line with the previous orthodox styles.

Ruth Sullivan’s “The Promise of Plain Language Drafting”<sup>44</sup> is also leveraged to overcome the emergent problem of plain language drafting to wit: how will the legislature’s primary audience be identified so that legislation is drafted in a way they will understand. This issue

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<sup>43</sup> R. Assy, ‘*Can the Law Speak Directly to its Subjects? The Limitation of Plain Language*’ (Journal of Law and Society, Sep 2011) Vol. 38, No.3 376 – 404.

<sup>44</sup> Ruth Sullivan, ‘The Promise of Plain Language Drafting’ in McGill Law Journal, vol 47 2001

is particularly relevant to a culturally diverse country like Nigeria with its multiplicity of languages and results from the impossibility of drafting for everyone. Ruth's proposition that the Draftsman should write for the most vulnerable group affected by the legislation is well received but does not fully resolve the enormity of the challenge which will be further interrogated in this dissertation towards charting new frontiers for legislative drafting in Nigeria.

The impossibility of making law comprehensible for all subjects is an issue that also gained traction in Natalia Zych's 'Plain-Language Approach in Legislative Drafting: A Perspective from Poland'.<sup>45</sup> In line with Ruth, the advocacy is still for the Draftsman to set out, prior to drafting, to research about the audience, their needs, education and language competencies and also the administration of usability tests after the draft to determine whether the draft is comprehensible by the users. The key for Natalia's Draftsman, is that he strives to fulfill his obligation to make an effort to increase the intelligibility of legislation wherever possible. Natalia certainly infuses the legislative process with a lot of dynamism and this perspective which is further interrogated in this dissertation is certainly a pathway to making legislation in the Nigerian polity clearer, understandable and accessible.

Ian Turnbull in his work focusing on the Australian Commonwealth titled 'Plain Language and Drafting in General Principles' propounded a four-fold strategy to legislative drafting to wit: planning the draft properly; using well known rules of clear writing; avoiding traditional forms of expression if simpler forms can be used; and using aids to understanding what are not merely linguistic. These principles are interrogated in the effort towards charting new frontiers for Nigerian legislation, particularly with regards to making it clearer, understandable and accessible. The work of Brian Hunt titled "*Plain Language in Legislative*

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<sup>45</sup> Natalia Zych, 'Plain-Language Approach in Legislative Drafting: A Perspective from Poland' in *Comparative Legilinguistics*, vol.33, 2018

*Drafting: Is it really the Answer?*” and the considerations therein of the link between legislative drafting in plain language and accessibility of the law to the public<sup>46</sup> engenders the focus of present inquiry on the probable and significant impact of the plain language movement on Nigerian legislation.

Helen Xanthaki’s “*Drafting Legislation: Art and Technology of Rules for Regulation*” which addressed the issue of comparative legislative drafting and the importance of training for legislative draftsmen<sup>47</sup> is a work leveraged by the present inquiry in its considerations of the traits required of a Draftsman and the place of periodical training in ensuring that he is better informed of trends in legislative drafting and equipped with the basic skill of drafting.

The work of *Reed Dickerson* titled ‘*The Fundamentals of Legal Drafting*’ (page 32) is also important to present inquiry in its interrogation of the challenges faced by a Draftsman. It presents ambiguity as “the most serious disease of language” and a hindrance to the quest to draft legislation in plain language, and promotes the need for the Draftsman to rely only on words which have a well-established meaning as against the use of verbose words which have little or no significance to the understanding and readability of the work.<sup>48</sup>

Mukund Sarda’s ‘*Principles of Legislative Drafting: A Study*’, exposed yet another challenge to the Draftsman, one which is important to the present inquiry- the limited time given to the Draftsman to construe and develop the content of a draft and the result of a substandard draft. This is an issue this dissertation resolves with an emphasis on the stages deduced for the preparation of a draft and the need to adhere to strict conformity to these stages in developing the Draft. This dissertation also acquiesces on the need for knowledgeable criticism of the Draft as highlighted by Sarda and leverages this position to propose that the individuals who

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<sup>46</sup> B Hunt, “*Plain Language in Legislative Drafting: Is it really the Answer?*” (Statute Law Review, 2002) Volume 23, No 1

<sup>47</sup> H Xanthaki, “*Drafting Legislation: Art and Technology of Rules for Regulation: (Oct 2014) Hart Publishing* 1<sup>st</sup> Edition. Chapter 6

<sup>48</sup> R. Dickerson, *The Fundamentals of Legal Drafting* (2nd ed., Boston, 1986) 32

draft legislation ought not to be engaged in scrutinizing the legislation.<sup>49</sup> It also leverages the convictions of Sarda that the Draftsman ought to have full and intimate knowledge of the Constitution, procedure in parliament and court, living conditions and the difficulties of legislative drafting to chart new frontiers for developing more efficient legislations in Nigeria.

#### 2.4 Legislative Drafting

In understanding legislation, this is a question that has pondered the minds of different drafters as well as theorist. Legislations are written rules of law made by the body/organization that has the necessary legislative power conferred upon it by the Constitution of the land and it must follow a legally approved or accepted process of law making.<sup>50</sup> The major distinction of legislation from other rules is that they are made to rule over the people as the source of authority.

Legislative drafting on the other hand, is communication in permanent form which must be clear, unambiguous because it is not spoken.<sup>51</sup> It is a skill that needs to be learned. One of the reasons why every lawyer must learn legal drafting is because of the saying that — “lawyers have two failings; first is that they do not write well and the second is that they think they do”. A legislative drafter’s aim includes the following: firstly, Conciseness: The fact that drafting should be concise does not mean that material facts should be left out.<sup>52</sup> Comprehensibility: This would involve the draftsman putting his thoughts together before drafting.<sup>53</sup> Clarity: It involves one point leading to the other, just as stipulated by Coode. Draft should be logical and chronological. The basic tool in drafting involves a good

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<sup>49</sup> Mukund Sarda, ‘Principles of Legislative Drafting: A Study’ in *Orient Journal of Law and Social Science*, volume v, issue 2, January 2011.

<sup>50</sup> H Xanthaki, ‘Legislative Drafting: A New Sub-Discipline of Law is Born’ 57 <<http://space.sas.ac.uk/5234/1/1706-2278-1-PB.pdf>> accessed 10<sup>h</sup> July 2023

<sup>51</sup> Onyekachi W Duru, ‘Legislative Drafting’ (LinkedIn, Jul 2016) <<https://www.linkedin.com/pulse/legislative-drafting-onyekachi-duru-esq>> accessed 10 July 2023.

<sup>52</sup> Reed Dickerson, ‘The Fundamentals of Legal Drafting,’ (Little Brown and Company, 1965) 3.

<sup>53</sup> C Stefanou ‘*Drafter Drafting and the Policy Process*’ in C. Stefanou and H.Xanthaki, *Drafting legislation: A Modern Approach*, (Ashgate Publishing, 2008) 321, 323.

command of English language (simple and correct English) in order to achieve the aim of plain language in legislative drafting; readable and simply understood. If there is a long word and there is a shorter one, it is advisable to the shorter one.<sup>54</sup>

The Constitution prescribed basic features of the enactment process. When a bill is in the process of becoming a legislation, before enactment it is called a Bill and it goes through the Senate and House of Representatives, after which it becomes an Act. Since Nigeria is a Federal state and thus practice Federalism, after enactment, it will be distinguished as federal enactment.<sup>55</sup>

## **2.5 The importance of legislative drafting**

In the modern state and most common law jurisdiction, societal and institutional change must be made through written law. Hence, if the law is not written it is not punishable.<sup>56</sup> This is both a democratic expectation with aim to foster rule of law and a practical necessity for constituency in approach. This is stipulated in the Constitution, predominantly the Fundamental provisions enshrined in Chapter IV of the 1999 Constitution of Nigeria (CFRN).<sup>57</sup> The court is not burdened with the fast-growing society, to make laws that will curb the growing injustice or adjust the system. Legislation today is central to the process of change and evidently changes in laws or Acts. For example, in an interchange from one form of government to another such as the Electoral Act 2004.<sup>58</sup> It is the vehicle by which countries respond to the increasing demands that arise from membership of the international order, as for example, the changes introduced through the World Trade Organization (WTO) and international agreements on environmental protection and other treaty that could be entered by two or more

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<sup>54</sup> WAYNE SCHIESS, PLAIN LEGAL WRITING: DOIT (2019)

<sup>55</sup> *Ibid*

<sup>56</sup> Section 24 of the Criminal Code.

<sup>57</sup> Constitution of The Federal Republic of Nigeria 1999 (As Amended) chapter iv

<sup>58</sup> Electoral Act 2004

countries, that will not derogate from their home law. The Legislation is the means to achieve these steps.

Legislation and the institutions created under it are the principal instruments through which strategic and streamlined development is undertaken. Development calls for new legal institutions; these must be appropriate to the needs and circumstances of the particular society. This process is undoubtedly affected by the quality of the instruments and by the speed with which they are drawn up and put into effect. Success may be dependent upon various factors such as: the special legal skills and knowledge of a drafter; the excellence of research skill into the legal and practical implications of the policy options, thus to avoid retrospective effect of laws which will in no doubt make such a law useless and ineffective.<sup>59</sup>

## 2.6 Legislative Drafters

As a result of the influence of colonization, most of the Commonwealth including Nigeria, have adopted the British practice of separating legislative drafting from policy-making. Policy is for the Ministry responsible for the subject area,<sup>60</sup> such as the ministry of justice, ministry of finance, ministry of Agriculture and others. Drafting a legislation is treated as a distinct legal bustle, to be carried out, typically, by a cadre of specialist legal officers assigned primarily or exclusively to this work after undergoing various scrutinizes by official member of government with the sole aim of drafting a legislation.<sup>61</sup> However, a central drafting office servicing the needs of the Government at large is now a settled feature of Commonwealth drafting. It has become a necessity in many countries because of a scarcity of lawyers in public administration, especially in the individual Ministries. In Nigeria, all Executive Bills are drafted by the various Ministries of Justice.<sup>62</sup>

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<sup>59</sup> C Stefanou 'Drafter Drafting and the Policy Process' in C. Stefanou and H. Xanthaki, *Drafting legislation: A Modern Approach*, (Ashgate Publishing, 2008) 321,

<sup>60</sup> KW Patchett, *Legislative Drafting Course*, (RIPA Regent's College, 1992) 18.

<sup>61</sup> 8 Experts vary, Driedger says about 10 years while Laws says 7-8 years. See S Laws, 'Drawing the Line' in Stefanou and Xanthaki, (n15) 19.

<sup>62</sup> A Guide to Legislation and Legislative Process in British Columbia, Part 2, Principles of Legislative Drafting, Office of Legislative Counsel (Ministry of Justice, Province of British Columbia, August 2001) 1; I Turnbull,

Legislative drafters are people who draft legislation, simply put. They have to understand the approach and method through which legislations are drafted.<sup>63</sup> The fundamental rules of drafting are that it should be accurate, complete, precise and clear and the drafter must know the stages of drafting.<sup>64</sup>

## 2.7 Nigeria and Legislative Drafting

Nigeria is a federal state consisting of federal, state and local government. Drafting is undertaken at all these a level of government but that is outside the scope of this research. Like most common law jurisdiction, in Nigeria, drafters are employed by the Ministry of Justice (MOJ).<sup>65</sup> MOJ drafts all executive bills and guide government agencies in law-making. The drafting office in MOJ is the Legal Drafting Department headed by a Director who reports directly to the Solicitor General.

Unlike the UK where drafting is centralized, in Nigeria, drafting is decentralized as drafters<sup>66</sup> are also employed in the Directorate of Legal services of the National Assembly (NASS)<sup>67</sup> and the private sector (consultants) to draft member's bills and private member's bills. The drafting office of NASS is the Legal Drafting Department headed by a Director who reports to the Permanent Secretary in charge of the Directorate, who in turn reports to the Clerk of the NASS.<sup>68</sup>

The distinction between executive member's and private member's bills is crucial to clarify how legislative drafting is done in Nigeria. Executive bills are initiated by the execu-

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'Drafting Simple Legislation' (1995)12 Austl. Tax F. 247,249; Euan Sutherland, 'Clearer drafting and the Timeshare Act 1992: A Response from Parliamentary Counsel to Cutts' (1993) 163

<sup>63</sup>A *Guide to Legislation and Legislative Process in British Columbia* Part 2, Principles of Legislative Drafting, Office of Legislative Counsel (Ministry of Justice, Province of British Columbia, August 2001)1

<sup>64</sup> VCRAC Crabbe, 'A Developing Discipline' (CALC African Conference, Abuja, Nigeria in April 2010).

<sup>65</sup> National Open University of Nigeria, LED 601: Introduction to Legislative Drafting (Goshen Print Media 2006) 48.

<sup>66</sup> B Hunt, Plain Language in Legislative Drafting: is it really the Answer? (2001) 25, 27.

<sup>67</sup> SO Ofuani, 'Organisation of a Legislative Drafting Office' (2012)1(1) 89, 93.

<sup>68</sup> *ibid*

tive and drafted by MOJ. The scope and contents of executive bills are determined by the minister responsible while the details are determined by civil servants.<sup>69</sup>

The minister prepares a proposal in form of a cabinet memorandum<sup>70</sup> which is then presented to cabinet for approval after which MOJ is instructed to draft. Members' bills on the other hand, are initiated by legislators and are drafted by the drafting office of NASS while private members' bills are initiated by interest groups or NGO's and drafted either by NASS or by consultants.<sup>71</sup>

Ideally, that is how it should be but in most cases, what really happens with executive bills is, the ministry responsible employs a consultant to draft because of their experience and the need to speed up the drafting process.<sup>72</sup> At the time of presenting the cabinet memorandum to the executive, the bill itself is attached and if approved, MOJ is instructed to draft. Drafting instructions are instructions to vet the already drafted legislation.<sup>73</sup> With members' bills, the legislator responsible may instruct a consultant to draft which may form the basis of a lay draft presented to NASS as instructions.

With private members' bills, the interest group seeking to present a bill in most cases produces a bill and because it must be sponsored by a legislator, it is presented through a legislator to NASS as instruction to draft. The drafting office of NASS, aside from drafting members' and private members' bills is also responsible for fine tuning all bills. Once a bill is presented to NASS, it becomes the property of NASS whether it is executives, members', or private members' bills. If a bill is not originally drafted by NASS, it is vetted at this point and if considered unsatisfactory, it is drafted from scratch before it is presented to the various Houses of NASS for passage through the legislative process.

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<sup>69</sup> DT Adem, *Understanding Bills* (Lexis Nexis 2013)8.

<sup>70</sup> *ibid*

<sup>71</sup> National Open University of Nigeria, LED 601: Introduction to Legislative Drafting (Goshen Print Media 2006) 93.

<sup>72</sup> Xanthaki, *Drafting Legislation: Art and Technology of Rules for Regulation* (Hart Publishing 2014) 33.

<sup>73</sup> *Introduction to Legislative Drafting*, A Paper presented by the Legal Services Department to the 2013 promotion examination coaching programme, organised by the Federal Ministry of Justice, 5.

## **CHAPTER THREE**

### **PLAIN LANGUAGE IN LEGISLATIVE DRAFTING**

This section gave more robust explanation of plain language in legislative drafting and advocated for the use of clear, simple, and transparent language in crafting laws and regulations, with the aim to enhancing accessibility and comprehension for all stakeholders involved, especially the general public.

#### **INTRODUCTION**

The plain language movement seeks to make legislation relatable to the jurisdiction and the people it aims to govern and as such improve the direct access and affordability of law to lay people in the society. This focus is interrogated further in this Chapter.

Prior chapters, particularly, the historical background of plain language have exposed that legislation in the UK and most common wealth jurisdictions were drafted in superfluously wordy (bulky) and legalistic language which lacked clarity and certainty just for the mannerism of exhausting the English words in expansive grammar.<sup>74</sup> This was unintelligible and difficult for comprehension to users. Thus, discouraging the average person to pick up a legislation to study and understand the content of the document. The legislation suffered from poor arrangements and structure, an inconsistent and elaborate mode of expression, and was generally drafted in artificial and legalistic language.

This style which originated from the UK and now considered traditional is practiced in most commonwealth jurisdictions today, appreciation is given to the democratic structure and spirit of colonization which foster the adoption of several practices that now forms the foundation of legal principles as well as drafting legislations in Nigeria and other wide range of colonized states (commonwealth countries). Although it may vary from one jurisdiction to the other, it is often characterized with the use of long intricate sentences, repetitions such as 'null & void', synonyms, foreign expression, excessive use of cross-references, sentences that

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<sup>74</sup> National Open University of Nigeria, *LED 601: Introduction to Legislative Drafting* (Goshen Print Media 2006) 48.

do not follow Standard English usage, archaic words such as ‘thou’ and expressions, pompous language similar to ‘aforementioned’, French and Latin maxims, legal Sentences that do not follow Standard English usage, unusual use of words, lack of punctuations and explanatory materials which most legislations have now added for easy explanation and to prevent lack of interpretation and vague understaffing of a word.<sup>75</sup>

Legislation drafted in this style is thought to be precise though its meaning may not readily be explicit to users<sup>76</sup> because, it is drafted to cover all practical and possible scenario and nothing is left for inference.<sup>77</sup> Turnbull notes that “the legal effect of the traditional style, even in its bad forms, is usually very precise in the sense that it gives exact effect to the wishes of the policy-makers. But the problem with this is that it is only the drafters and legal minds that can understand and comprehend the content of the legislation. It is intended to have this effect from its terms alone, not from reliance on the courts or some other authority to fill in the details.”<sup>78</sup> It is to counter these trends that experts proposed that legislation should move away from the traditional styles, towards statements of general principles or plain language.<sup>79</sup> A language structure that encompasses the basic understanding of English Language, avoiding the unnecessary grimmer and proper arrangement as laid down in the following sub-heading of how a legislation should be structured.

### **3.1 Drafting in general and plain language**

For centuries, lawyers have been using a specific writing style which became too complex for unqualified users to comprehend. Those standards contain long, complex sentences and impersonal constructions. A new chapter in this field was opened by the plain-language movement, which promotes clear and effective communication. The main goal of this movement is

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<sup>75</sup> I Turnbull, ‘Legislative Drafting in Plain Language and Statement of General Principle’ (1997)18(1) 21,22.

<sup>76</sup> B Hunt, Plain Language in Legislative Drafting: is it really the Answer? (2001)22 SLR p.32.

<sup>77</sup> J Kimble, ‘Answering the Critics of Plain Language’ (1994-95)5 Scribe Journal of Legal Writing, 51, 55.

<sup>78</sup> Turnbull (n38)22

<sup>79</sup> W Dale, Legislative Drafting: A New Approach (1984).

to prepare texts which a mass audience can easily read and understand.<sup>80</sup> This standard encourages writers to avoid jargon, redundancy, ambiguity, and obscurity. Plain-language fundamentals have been aggregated in dozens of guidelines and involve ‘planning a document, designing it, organizing it, constructing sentences, choosing words and testing mass documents on typical readers.’<sup>81</sup> These guidelines are very dynamic and continuously expanding after being widely discussed. However, it is important to note that all of them are “user-centric”. All rules promote the use of language that the final user understands and feels comfortable with. According to plain-language guidelines, the crucial phase has been defined as the moment before writing the document, when the sender needs to perform research about the audience, their needs, and education and language competencies.<sup>82</sup>

The value of thinking about what suits the users leads Comparative Legal linguistic also to usability tests, which confirm whether the documents are comprehensible by the users. According to plain-language guidelines, readers’ comprehension might be improved by linguistic changes such as writing short sentences, avoiding archaic vocabulary, using vigorous verbs, and favoring the active voice. Furthermore, the plain-language framework is supported by visual and design techniques like simple typography and adding useful headings, lists or tables. These improvements are as important as linguistic changes. Moreover, according to Martin Cutts, ‘plain language need effective layout otherwise only half the job has been done’.<sup>83</sup> The art is to apply plain language guidelines in legal texts to encompass all the complexity of the law. Strategic concern is that the meaning of legal texts might be hard to understand especially from the perspective of the lay public. Key concern is that to comprehend legal documents, specific knowledge and language competences might be required, which are usually out of non-lawyers reach. As per Rabeea Assy ‘Using the law effectively requires ex-

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<sup>80</sup> IML Turnbull, *Clear Legislative Drafting: New Approaches in Australia* (1990)11 SLR, 161-183.

<sup>81</sup> DSL Kelly, ‘Legislative Drafting and Plain English’ (1985-1986)10 Adel L. Rev. 426.

<sup>82</sup> Renton Committee, ‘The Preparation of Legislation’ (1995) Cmnd 6053, 10.12-10-13.

<sup>83</sup> Martin Cutts, ‘Nailing the lies of the Plain English Campaign’ (*Researchgate*, November 2021) Publisher: Plain Language Commission ISBN 978-1-7399178-2-1.

pertise that goes far beyond understanding the meaning of the words used to communicate it'.<sup>84</sup> Polish theorists of the law, a country which is steadily growing towards the dimension of plain language, in many publications reconnoitered characteristics and functions of legal language and have been focused on common understanding of law postulates. The conclusion is that legislators or legal drafters must face the challenge of seeking compromise between rendering the law intelligible to the unspecialized users and enhancing precision in drafting the law. Despite claims that a definite solution might not be foreseeable, it's worth looking for solutions like plain language approach which has been embraced by many jurisdictions in the commonwealth countries, which can address both legislators and non-lawyer's needs.<sup>85</sup> The dilemma of how to implement plain language guidelines into legal texts will be explored later in this study by presenting proof of concept assumptions related to redrafting the polish consumer law.

### 3.2 Plain Language

There is no generally acceptable definition of plain language. Plain language has been described as modern English, plain English, good professional writing and practice, simplification of legal communication, as well as promoting access to law per the understanding of another jurisdiction.<sup>86</sup> Simply put, it is a language that is clear and effective for its audience to read and comprehend. Check elaborates by saying, "*A communication is in plain language if it meets the needs of its audience-by using language, structure, and design so clearly and effectively that the audience has the best possible chance of readily finding what they need, understanding it, and using it.*"<sup>87</sup> Experts note that it entails presenting

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<sup>84</sup>Rabeea Assy, Can the law speak Directly to Its Subjects? The Limitation of Plain Language (Journal of Law and Society) Vol. 38, No. 3, pp.376-404 2011 posted 8 Aug 2011 accessed 20 November 2022.

<sup>85</sup> Ibid

<sup>86</sup> P Butt, *Modern Legal Drafting, A Guide to Using Clearer Language*, (3rd edn., Cambridge University Press 2013)101; DT Adem, Legislative Drafting in Plain English, (*Lexis Nexis* 2010)1; J Barnes, 'The Continuing Debate about 'Plain Language' Legislation: A Law Reform Conundrum' (2006) 27 (2)83-132,83.

<sup>87</sup> Annetta Check, 'Defining plain language', (2010) 64 Clarity

information in a way that the intended audience can read,<sup>88</sup> understand and act upon after a single reading, or as quickly as the subject matter allows.<sup>89</sup>

Krongold points out that this is not a fair test for legislation because legislation requires more effort to read than most prose, therefore plain language principles should be applied in such a way that the law should be just as legally precise as it was before but clearer and inviting to the reader.<sup>90</sup> It is not a special language. It is ordinary English language presented or expressed directly and clearly to convey the message simply and effectively to the users. Garner notes that plain English should not connote drab and dreary language. That it is typically quite interesting to read that it is robust and direct-the opposite of gaudy, pretentious language. In his words, “You achieve plain English when you use the simplest, most straightforward way of expressing an idea. You can still choose interesting words, but you will avoid fancy ones that have everyday replacements meaning precisely the same thing.”<sup>91</sup>

Plain language and plain English are always used interchangeably.<sup>92</sup> But Xanthaki notes that there is a difference between the two.<sup>93</sup> Plain language reflects language as a method or means of communicating ideas and includes mathematical languages, flow charts and characters, and words. It is a broader term, and it is more appropriate for bilingual or multilingual jurisdictions. Plain English is a narrower term.<sup>94</sup> Particularly because English is a language. For purposes of this dissertation however, the two terms will be used interchangeably.

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<sup>88</sup> Butt (n67)102; Plain English Campaign [www.plainenglish.co.uk/campaign.html](http://www.plainenglish.co.uk/campaign.html); Plain English Foundation, <<https://www.plainenglishfoundation.com/index.php/plainenglish/whatisplainenglish>>accessed 12 December 2022.

<sup>89</sup> DT Adem, *Legislative Drafting in Plain English*, (Lexis Nexis 2010)1; J Barnes, ‘The Continuing Debate about ‘Plain Language’ Legislation: A Law Reform Conundrum’ (2006)27(2)83-132, 83.

<sup>90</sup> S Krongold, ‘Writing Laws: Making them Easier to Understand’ (1992)24(2) *Ottawa Law Review* 509.

<sup>91</sup> Pennisi GA: ‘Plain language: Improving Legal Communication’ (2014) 16 *EJLR* 533.

<sup>92</sup> MM Asprey, *Plain Language for Lawyers* (3rd edn. Federation Press 2003)11.

<sup>93</sup> H Xanthaki, ‘*On Transferability of Legislative Solutions: The Functionality Test*’ in Stefanou and Xanthaki (n15)13.

<sup>94</sup> H Xanthaki, *ibid*

### 3.3 Legal and Legislative Drafting

Legal drafting is communication in permanent form which must be clear, unambiguous because it is not spoken. Legal drafting is the art of legal writing, thus a skill that needs to be learned. One of the reasons why every lawyer must learn legal drafting is because of the saying that —lawyers have two failings; first is that they do not write well and the second is that they think they do.<sup>95</sup>

The basic tool in drafting involves a good command of English language. If there is a long word and there is a shorter one, choose the shorter one. When receiving instruction from a client at a client interview, the following are important. Have the right attitude at the interview. For instance, in receiving instruction for drafting a will and the testator stated that he has 10 wives and 5 concubines, who gave him 10 children; the legal practitioner is not expected to laugh at such rather he is expected to absorb the information like an ordinary information.<sup>96</sup>

#### **Fundamental rules of legal drafting:**

Importantly, every draft should cover the instruction given<sup>97</sup>:

- Accurately;
- Completely;
- Precisely;
- Clearly

In contemporary English, this does not include the use of slang, Short and simple words/sentences.

#### **Stages of Legal Drafting:**

- I. Taking and Understanding of instruction.
- II. Analyzing the instruction given.
- III. Designing the draft.

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<sup>95</sup> Richard Wasserstorm, 'Lawyers as Professionals: Some Moral Issues' (Human Rights) Volume 5. No 1 (Fall 1975) Published by : American Bar Association <<https://www.jstor.org/stable/27879014>> accessed 12 December 2022

<sup>96</sup> D. Berry, 'Audience Analysis in the Legislative Drafting Process' (*Loophole*, 2000) 61-69.

<sup>97</sup> Dale W, *Legislative Drafting: A new Approach* (Butterworths 1977).

IV. Composing the draft.

V. Scrutinizing the draft.<sup>98</sup>

In understanding the instruction, where there are areas which are not clear, questions should be asked to clarify such. In analyzing the instruction, it must be done considering the general law and its practicability.<sup>99</sup> The tenancy instance given above is applicable. In composing the draft, it is necessary for the drafter to make use of precedents like Kelly's draftsman, and other books that have been tested and tried. Importantly, adapt precedent wisely and according to the instruction received. This is because no two laws are identical. In scrutinizing the draft, (editing and proof reading), note that there is assumption that the drafters know everything. Thus, someone else should proofread. The drafter can also wait a few days to proof read which entails proof reading with a fresh mind.<sup>100</sup> These are skills that should be adopted by a draftsman and when he is being misled to draft in the ancient ways encouraged by verbosity and usage of repetition, it would be easy for correction was a layman or another drafter has gone through the document and seen that it is not easily understood or will be difficult to comprehend by the layman then scrutinizing of the document is necessary.

### **Techniques of Drafting**

This is the way in which a good draft can be achieved. The technique of drafting includes the following:

- There should be a sequence in the draft. Thus, always put the first, first and not last.
- Use short sentences with punctuation mark.
- Use active voice and not passive voice. This is the subject-verb-object.

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<sup>98</sup> Dickerson R, *Materials on Legal Drafting*, (West Publishing 1981).

<sup>99</sup> Esegbabon R, *The Nigerian Legislative Process*, (Law-Link Consults 2005).

<sup>100</sup> *ibid*

Passive voice – The cheque was authorized and signed by the finance secretary. Active voice – The finance director authorized and signed the cheque. A draft is documented in passive voice because English is not our first language and thus there is a translation from native to English language.<sup>101</sup>

- The draft must be intelligible.
- There should be economy of words – language. This involves the non-use of superfluous words. For instance —I will use the full weight of the lawl, —I will deal with you to the full extent.
- There should be directness and not zig-zag. Do not write with —on or beforel but — on or about.
- Be familiar with the language used. Thus, do not swap words like advice for advice.
- Orderliness in drafting – sequence and chronological.
- The use of paragraph where necessary especially where conditions are to be provided for.
- Three layered texts consisting of introductory statement, independent paragraph, concluding statement.<sup>102</sup>

Examples of two layered text

“1. The treasurer shall vacate office if he has completed three years in office, becomes bankrupt or dies.

The treasurer shall vacate office if he

- (a). has completed three years in office;
- (b). becomes bankrupt; or
- (c). dies”

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<sup>101</sup>Driedger EA *The Composition of Legislation: Legislative Forms and Precedents* (2nd edn rev, Department of Justice Ottawa 1971)

<sup>102</sup>Dickerson R, *Materials on Legal Drafting*, (West Publishing 1981).

## Examples of three-layered text

“1. If an applicant has attained the age of 21 years, has completed six months services, agrees to be bound by this Trust Deed, he may be accepted as a member.<sup>103</sup>

If an applicant

- a. has attained the age of 21 years
- b. has completed six months service
- c. agrees to be bound by this Trust Deed, he may be accepted as a member.”

## **Numbering of paragraph**

A paragraph is numbered (a) - small alphabet. A sub-paragraph is numbered (i) – Roman numeral. A sub sub-paragraph is numbered (A) – capital letter. Thus, it is section 120 sub-section (4) paragraph (a) and sub- paragraph (ii), sub sub-paragraph (A).<sup>104</sup>

## **Elements of a legal sentence**

The elements of a legal sentence are:

- The case;
- The conditions;
- Legal subject;
- Legal action.

Where a right is conferred, the legal subject must be a person. The legal subject is the person conferred with a power, privilege, and right. Legal action is the right, privilege, power required of the legal subject. Legal subject and action are linked by using a connective like shall, shall not, may or may not. Cases are the circumstances in which the legal action will be invoked. The words like when, where, in case are used.

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<sup>103</sup> Ibid

<sup>104</sup> Crabbe VCRAC, Legislative Drafting (Cavendish Publishing 1993).

Conditions involve the conditions to be satisfied before the legal action can be taken by the legal subject.<sup>105</sup> It uses the words, unless, until. Note that it is not in all cases that the conditions are clear.<sup>106</sup>

### **Draftsmen's habit to avoid**

- Long and uncommon words; to foster plain language approach
- Intricate expression – other than; breed confusion
- Verbose style – This can be when it is said that a property is lying, situate, being at No. 7.
- Archaic words: Note that some archaic words are used like —whereas...in recital of a deed. The following to be avoided are said/aforesaid, same, hereinbefore/hereof/ hereafter, witnessed, subject to.
- It is vital that a draftsman should never change his words if he does not want to change the meaning. Thus, if there is a change in word, then there is a change in meaning. For example, in drafting a tenancy agreement, if landlord/tenant is used, it is fatal to change to lessor/lessee. This is because they connote different thing. Thus, maintain consistency in drafting.

### **Use of “will”, “shall”, “may”**

The word WILL and MAY, suggest what is not mandatory, thus discretionary. The word SHALL and MUST suggest obligation and mandatory--*MAIWADE V. FBN PLC*,<sup>107</sup>*BAMAIYI V. AG FED & 5 ORS*<sup>108</sup> Use of “and” & “or” The word 'AND' suggest a

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<sup>105</sup>Ilbert C, Legislative Methods and Forms, (Oxford, 1901).

<sup>106</sup>Crabbe VCRAC, Crabbe on Legislative Drafting (2nd edn., Lexis Nexis 2008).

<sup>107</sup>*MAIWADE V. FBN PLC & ANOR* (2013) 5 NWLR P. 444

<sup>108</sup>*BAMAIYI V. AG FED & 5 ORS* (2001) SC. 45/2000

conjunctive interpretation and thus can never be a disjunctive interpretation. The words EITHER OR suggest a disjunctive interpretation. Importantly, never use AND/OR.

### **Punctuation**

□ Full stop (.): ends a statement or sentence (I am a qualified legal practitioner.) except where it is in the form of exclamation or question, in which case exclamation mark or question mark will be used. It can be used at the end of an abbreviated work or acronyms e.g. Dr., A.C.J.A.

□ Column (:): - used to introduce a list.

□ Semi-column (;): used to separate related sentences. It is inserted instead of use of a conjunctive word like and‘.

□ Comma (,): to separate one group of words from another. The proper use of comma gives the sentence clarity.

□ Question mark (?): used immediately after a direct question and not an indirect question.

□ Quotation marks (“...”): used to enclose exact words spoken by a person or enclose words when drafting the definition section.

□ Exclamation mark (!): used to convey an exclamation.

□ Bracket: to enclose after thoughts and used after figures in documents. There are (parenthesis) and square brackets [bracket]. Not much difference between the two and more of convention to use the square bracket in the commencement in legislative drafting.

□ The apostrophe (a'): it is placed before the s. It is used to show possession e.g. Ijeoma's house.<sup>109</sup>

### **Ambiguities in drafting**

Ambiguities involve where a word have too many meanings. There is ambiguity of participle. Also, that ambiguity is not the same thing as vague. A calendar day having 24 hours beginning at 12 midnight and expires the next 12 midnight. A week is 7 clear days beginning 12 midnight Saturday to 12 midnight the next Saturday.<sup>110</sup>

The following aids clarity and accuracy in drafting:

- (a) Definitions or descriptive words. Example —Mr. Emeka Danladi Adisa (called the lessor).
- (b) Punctuation mark in sentences.
- (c) Interpretation clause, an interpretation clause can.
- (d) Means – only those stated.
- (e) Includes – not limited to those stated. Use either of them but never use means and includes together.
- (f) The use of brackets.
- (g) The use of marginal notes – by the side.
- (h) The use of schedules.

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<sup>109</sup> Ibid n 88

<sup>110</sup> Writer Center, 'Ambiguity in Language' (okstate.edu, 2020).  
<[https://osuwritingcenter.okstate.edu/blog/2020/11/20/ambiguity-in-language#:~:text=Lexical%20Ambiguity%3A%20\(within%20a%20word,two%20or%20more%20possible%20meanings](https://osuwritingcenter.okstate.edu/blog/2020/11/20/ambiguity-in-language#:~:text=Lexical%20Ambiguity%3A%20(within%20a%20word,two%20or%20more%20possible%20meanings)> accessed 10 July 2023.

(i) Repetition of preposition.

(j) Enumerating particulars and the ejusdem generis rule (should be use when you cannot foresee all the foreseeable).<sup>111</sup>

### 3.4 Legislative Drafting

#### PARTS OF LEGISLATION

**Preliminary matters:** This consists of:

- Long title;
- Commencement;
- Enacting formula or clause;
- Preamble;
- Duration;
- Short title/citation;
- Interpretation/definition section.<sup>112</sup>

**Principal provisions:** This consists of:

- Powers and duties of bodies established;

**Miscellaneous provisions:** This consists of:

- Offences, penalties, parties.

**Final provisions:** This consists of:

- Repeals;
- Schedule
- Savings, etc.<sup>113</sup>

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<sup>111</sup> Oscar Edoor Ubhenin, *The Nigerian Legislature: Cases and Concepts* LAP Lambert Academic Publishing (January 25, 2010)

<sup>112</sup> Tonye Clinton Jaja, 'Stages Of The Legislative Drafting Process' (NLS-CAP Intensive Training Workshop on Legislative Drafting, December, 2014) accessed 10 July 2023.

## **LONG TITLE:**

This is the purpose of the statute. There are three rules that must be observed in drafting the long title.<sup>114</sup>

- All words must be in block letters;
- It must come first;
- It must start with —A BILL FOR AN/A ACT/LAW/BYE-LAW”;
- Must end with any of these phrases: —AND ALLIED MATTERS AND FOR MATTERS RELATED THERETO or —AND FOR CONNECTED MATTERS or —AND FOR MATTERS INCIDENTAL THERETO —AND FOR RELATED MATTERS”<sup>115</sup>

## **COMMENCEMENT:**

Depends on the scenario:

- Where a particular date is given then —Commencement [22 November 2022 or November 22, 2022]; or
- Where no date is given but a particular office is given the responsibility of determining when the law will take effect, then it must come in as a section —Section 3: The Honourable for Labour and Productivity shall determine the commencement by a notice in the official Gazette of the Federation.
- No date and responsibility on any office, then —Section 3: This Act/Law/Bye-law shall come into effect on the date it receives the assent of the President of the Federal Republic of Nigeria/Governor/Chairman.<sup>116</sup>

## **ENACTING FORMULA/CLAUSE:**

Discloses the institution that made the law

Sample; IN A FEDERAL LAW —ENACTED BY THE NATIONAL ASSEMBLY OF THE FEDERAL REPUBLIC OF NIGERIA as follows:”<sup>117</sup>

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<sup>113</sup> Tonye Clinton Jaja, ‘Stages Of The Legislative Drafting Process’ (*NILS-CAP Intensive Training Workshop on Legislative Drafting*, December, 2014) accessed 10 July 2023.

<sup>114</sup> LawWales, ‘The Layout of an Act’ (*law.gov.wales*, Sep, 2022) <<https://law.gov.wales/layout-act>> accessed 12 July, 2023.

<sup>115</sup> Ibid

<sup>116</sup> Ibid

### **PREAMBLE:**

Discloses the reasons for the Act/Law/Bye-law. No longer in use generally. The Preamble, which sets forth the noble purposes for which the Constitution is "ordained and established," was composed by the constitutional convention's Committee of Style<sup>118</sup>

### **ESTABLISHMENT SECTION:**

Depends on the scenario

Where the law itself is establishing the institution, then —Section 4: There is hereby established under this Act, a body to be known as the Sneh Foundation Commission (in this Act referred to as —the Commission), or

Where the institution had been established before, but the law permits its existence/reestablishes it then —Section 4: There shall continue in existence, the body known as the Sneh Foundation Commission (in this Act referred to as —the Commission), or

Where the law is not establishing it and is not permitting its existence but gives the responsibility of establishment to an office. When the law will take effect, then —Section 3: The Honourable for Labour and Productivity may/shall establish a body to be known as the Sneh Foundation Commission).”<sup>119</sup>

### **SHORT TITLE/ CITATION:**

Nickname. Once there is a body to be established, use that body. The purpose of the law also determines the citation as it must be reflected. —Section 5: This Act may be cited as the Marv Foundation Commission Act, No. 3 2019.”<sup>120</sup>

**INTERPRETATION SECTION:** Some legislation contains an interpretation section which defines the meaning of certain words. The contents page of an Act will indicate whether or not there is an interpretations section.<sup>121</sup>

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<sup>117</sup> Tonye Clinton Jaja, ‘Stages Of The Legislative Drafting Process’ (*NILS-CAP Intensive Training Workshop on Legislative Drafting*, December, 2014) accessed 10 July 2023.

<sup>118</sup> Cengage, ‘Preamble’ (*Encyclopedia*, June 2018) <<https://www.encyclopedia.com/social-sciences-and-law/law/law/preamble>> accessed 12 July 2023

<sup>119</sup> LawWales, ‘The Layout of an Act’ (*law.gov.wales*, Sep, 2022) <<https://law.gov.wales/layout-act>> accessed 12 July, 2023.

<sup>120</sup> *ibid*

“In this Act, unless the context otherwise requires: —

Sneh means.....

Academia means.....

### **Qualities of a legislative draftsman**

- A draftsman should have intellectual stamina and capacity.
- A quick and retentive mind.
- Ability to analyze a problem in details.
- Dedication and patience. <sup>122</sup>

### **Stages of Legislative Drafting**

- Designing the draft: Producing a sketch. It is at this stage that the draftsman decides on which matters to banish to the schedule from the body of the draft. There is need for arrangement into Parts. This is for ease of reference and clarity purposes. <sup>123</sup>
- Composing the draft: Composing with the aid of Precedent books but not slavishly, compare existing legislation on the subject matter. Check whether the precedents are still in existence and any judicial decisions on the pronouncements of the statute. <sup>124</sup>
- Scrutinizing the draft: Comparing the draft with instructions received by the draftsman at the earlier stage of drafting process. Spelling, punctuations and appropriate paragraphing are also cross-checked at this stage. <sup>125</sup>

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<sup>121</sup> The Open University, ‘Interpretation Section’ (OpenLearn, 2022) < <https://www.open.edu/openlearn/mod/oucontent/view.php?id=68342&section=2.4#:~:text=Some%20legislation%20contains%20an%20interpretation,there%20is%20an%20interpretations%20section.>> accessed 12 July 2023

<sup>122</sup> Paul Idornigie, ‘Introduction to Legislative Drafting – The Qualities, Qualifications & Role of a Legal Draftsperson’ (July, 2022) < <https://paulidornigie.org/wp-content/uploads/2021/08/Introduction-to-Legislative-Drafting-Qualities-Qualifications-etc-Updated.pdf>> accessed 12 July 2023.

<sup>123</sup> Renton Committee, ‘The Preparation of Legislation’ (1995) Cmnd 6053

<sup>124</sup> Ibid

<sup>125</sup> Renton Committee, ‘The Preparation of Legislation’ (1995) Cmnd 6053

### 3.5 Formalities of Legislative Drafting

1. Parts: This is segmenting a statute. There are two criteria in determining whether a statute should be divided into parts.

- The length of the statute; and
- Whether there are sub-themes. For instance, prior to enacting CAMA in 1990, there were three independent statutes – Companies Act 1968, Land (Perpetual Succession) Act, and registration of Business Name Act. These statutes were merged into one.<sup>126</sup>

Once a statute having the above features is divided into parts, there will be clarity of presentation and ease of reference.

2. Schedules: In a statute, it helps banish details. For instance, section 4 of CFRN confers legislative powers on National Assembly and States House of Assembly,<sup>127</sup> the specific areas are found in the second schedule to the CFRN, 1999. If they were all contained in the section, the section will look clumsy and bulky. Thus, every information in the schedule must have a reference to a particular section of the law. The section must also refer to the schedule and the SCHEDULE AND SECTION must be read together. This is called INCORPORATION BY REFERENCE. Forms part of a law. It is used for graphic representation.<sup>128</sup>

3. Preambles: This is the spirit and background to the law – why the law is being made. It starts with —WHEREAS|. The preamble being the spirit and intendment of a particular legislation is to bills.<sup>129</sup>

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<sup>126</sup> Arinze Abuah, Yusuf Sulayman and Asiawu Belgore-Abdulhamid, 'Historical Background to the Development of Company Law in Nigeria: A Discourse' (*ResearchGate*, December 2021) <[https://www.researchgate.net/publication/357309612\\_Historical\\_Background\\_to\\_the\\_Development\\_of\\_Company\\_Law\\_in\\_Nigeria\\_a\\_discourse](https://www.researchgate.net/publication/357309612_Historical_Background_to_the_Development_of_Company_Law_in_Nigeria_a_discourse)> accessed 12 July 2023.

<sup>127</sup> Constitution of the Federal Republic of Nigeria 1999 (As Amended), section 4.

<sup>128</sup> *ibid*

<sup>129</sup> *ibid*

What recitals are to Deed. However, the use of preamble is now very uncommon. It is only used in certain legislation like:

□ The Constitution – See the Constitution of the Federal Republic of Nigeria, 1999 as amended. □ Local enactments: These are laws for section of persons – specific persons.

□ Treaties – International treaties.

□ Ceremonial statutes: These are statutes to mark a particular occasion or to honour someone. Thus, not really enforced by the courts. <sup>130</sup>

4. Marginal Notes: This is an aid to interpretation. It helps identify information on particular segment of the statute. It is not part of the statute but a summary of what is contained in the section. <sup>131</sup>

### 3.6 Phrases used in statute and their meaning

1. Without prejudice – What is in the previous known section should not affect the present section. Thus, it does not negate the section. Both are valid.
2. Notwithstanding – It serves as a proviso and overrides any other provision. It exhumes superiority. Example is section 251(1) CFRN, 1999 on the civil jurisdiction of the Federal High Court. <sup>132</sup>
3. Subject to – This is the opposite of notwithstanding. Thus, it is inferior or subordinate to a section.
4. Provided that – It qualifies the provision of the section. It could qualify the consequences of the section.

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<sup>130</sup> [https://saylordotorg.github.io/text\\_law-for-entrepreneurs/s04-introduction-to-law-and-legal-.html](https://saylordotorg.github.io/text_law-for-entrepreneurs/s04-introduction-to-law-and-legal-.html)

<sup>131</sup> Ibid n115

<sup>132</sup> Constitution of the Federal Republic of Nigeria 1999 (As Amended), section 251(1)

### **Research materials a legislative draftsman should consult during the process of Legislative drafting**

- 1999 Constitution of the Federal Republic of Nigeria (as amended);
- Precedent materials;
- Party manifesto;
- Resolution of legislature;
- Report of civil societies and organization;
- Judicial decisions;
- Law dictionary;
- English dictionary;
- Government policies.

### **Features of a good legislation**

- The legislation must not command the doing of the impossible (lex cogit ad impossibilia).
- The legislation must not have a retrospective application—S. 4(9) CFRN.<sup>133</sup>
- The legislation should be of equal application and not targeted to an individual or certain individuals.
- The legislation must not be ambiguous.
- The legislation should not oust the jurisdiction of the court. <sup>134</sup>

### **Differences between legislative drafting and legislative process**

Legislative process involves passing a bill into law while legislative drafting involves producing a bill. The result of legislative process is an Act or Law, while the result of legislative drafting is a Bill. The legislature is involved in legislative process, while the

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<sup>133</sup> Constitution of the Federal Republic of Nigeria 1999 (As Amended), section 4(9)

<sup>134</sup> QKnowBooks, 'Characteristic of a Good Law' (*QKnowBooks*, July 2023)  
<[https://qknowbooks.gitbooks.io/jhs\\_2\\_social\\_studies-law-and-order-in-our/content/characteristics\\_of\\_a\\_good\\_law.html](https://qknowbooks.gitbooks.io/jhs_2_social_studies-law-and-order-in-our/content/characteristics_of_a_good_law.html)> accessed 12 July 2023.

draftsmen are involved in legislative drafting. The stages involved in are different. The legislative drafting must be by a lawyer, while the legislator may not be a lawyer.<sup>135</sup>

### 3.7 Guide to Draft In Plain Language

Experts who have written on rules of plain language include Krongold. The rules for drafting in plain language may have similar features but there are no international standards of infallible test.<sup>136</sup> It is impossible for experts to agree on an ‘absolute’ plain language drafting style’ because firstly, English language is very flexible so every preposition can be expressed in several ways; secondly, time and efforts drafters are willing and able to devote to keeping their drafting simple vary; thirdly, even among drafters committed to simple drafting, some are better skilled than the others; and lastly the need for a balance between precision and simplicity.<sup>137</sup>

Indeed, there is no hard and fast rule about it. It is enough “if they apply the well-known rules for simple writing and avoid unnecessary obscure or long-winded legal expression in favour of simpler, more familiar expressions. Asprey notes that “Writing in plain language is just writing in clear, straightforward language, with the need of the reader foremost in mind.”<sup>138</sup> She notes further that if the draft will be unclear to users, it must be redrafted to make it clear, unambiguous, and easy to read.<sup>139</sup> One thing that is certain is that the rules are designed to make legislation easier to understand without changing meaning. Its implication is to make legislation leaner, cleaner and easier to read and understand.<sup>140</sup>

Turnbull gave a four-fold strategy used by the Australian Commonwealth drafters. This focuses on four aspects of drafting style to achieve clarity in legislation.

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<sup>135</sup> Oyenkachi W. Duru, ‘Legislative Process and Legislative Drafting’ (LinkedIn, 2016) <  
[<sup>136</sup> Asprey \(n27\) 13.](https://www.linkedin.com/pulse/legislative-drafting-onyekachi-duru-esq#:~:text=Legislative%20process%20is%20the%20process,the%20responsibility%20of%20the%20draftsman.> accessed 12 July 2023.</a></p></div><div data-bbox=)

<sup>137</sup> Turnbull (n52) 23

<sup>138</sup> MM Asprey, *Plain Language for Lawyers* (3rd edn. Federation Press 2003)11

<sup>139</sup> Asprey *ibid*, 12-13.

<sup>140</sup> I Turnbull, ‘Legislative Drafting in Plain Language and Statement of General Principle’ (1997)18(1) 21, 23 & 257.

First strategy is to adequately plan the draft. This includes identifying the main goals and principles early enough, reducing the number and complexity of concepts in the scheme, and constructing the scheme clearly, using diagrams and flow-charts whenever necessary, before beginning to express it in legislative form.<sup>141</sup>

Second strategy involves the use of well-known rules of simple drafting which include using short but well-constructed sentences, positive rather than the negative, active voice instead of passive voice, and parallel structures to express similar ideas in a similar form. Then, avoiding jargons, unfamiliar words, and double and triple negatives.<sup>142</sup>

Third strategy involves the avoidance of traditional legal forms of expression particularly where simpler expressions can be used in their place and the now traditional habit of constantly referring from one subsection to the previous one.<sup>143</sup>

Fourth strategy emphasizes the use of aids to understanding which are not merely linguistic and this includes using graphics, Reader's Guides, examples, purpose clauses, explanatory notes, road map and mathematical formula.<sup>144</sup>

These strategies will be analyzed in the next chapter where it is argued that plain language looks beyond words in making legislation clear, precise and unambiguous and that if drafters in Nigeria look beyond words when drafting by adequately planning the draft, carefully selecting words and arranging them in sentences, paragraphs and structure that follows a logical pattern, using all available devices that would aid readability and clarity, in doing so, understanding and accessibility will be enhanced.

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<sup>141</sup> MM Asprey, *Plain Language for Lawyers* (3rd edn. Federation Press 2003)

<sup>142</sup> *Ibid*

<sup>143</sup> *Ibid*

<sup>144</sup> MM Asprey, *Plain Language for Lawyers* (3rd edn. Federation Press 2003)

## CHAPTER FOUR TURNBULL FOUR-FOLD STRATEGY

This Chapter interrogated Turnbull's principles of drafting to wit: planning the draft properly; using well known rules of clear writing; avoiding traditional forms of expression if simpler forms can be used; and using aids to understanding what are not merely linguistic. It is also about leveraging the effort to chart new frontiers for Nigerian legislation, particularly with regards to making it clearer, understandable and accessible.<sup>145</sup>

### **4.1 First Strategy: Adequately plan the draft.**

This chapter encapsulated the instant development in legislative drafting in Australia, predominantly Turnbull's four-fold strategy which is established in the foundations of Australian progression towards plain language in legislative drafting and this has been their very guidance towards achieving such set goal stream lined in the previous chapters and this paper is geared toward the motion that if implemented in Nigeria legislative processes, it will make legislation clear, understandable and accessible, thus making the law effective to a large extent. The focus being federal legislation style in use, how it is drafted, language structure and suggestion for improvement. An effort is made to deemphasize reliance on words alone because, plain language looks beyond the meaning of words used to show they are perceived by users, how the information is organized and presented, the organization of words in sentences, the sentences in legislation, the design and layout as they all affect readability and understanding. The picture aid that could help users easily understands the consequences of their action. All these are what make a good society and a progressive one.

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<sup>145</sup> Michael Dauda, 'Plain Language in Drafting Legislation in Nigeria: The Possible Benefits' (*University of London*, 2016) < <https://sas-space.sas.ac.uk/9261/1/LLM%20Dissertation%20Final%202016%20-%20Student%20No.%201441558.pdf> > accessed 12 July 2023.

Changes are constant and once it is geared towards a positive direction, delay could amount to injustice to the system and the people.<sup>146</sup>

Plain language is almost non-existent in Nigeria. This could be seen in the way we write our articles, very much use of verbose grammar, and archaic words just for the superfluous nature that was imbedded in us. Also, even as little as Deeds and Wills, there is much use of confusing words that a layman would not understand aside from interpretation. A layman, with a basic form of education now finds it hard to enter into a simple contract because they are constructed in a manner that breeds confusion. Aside a few articles and books, there is nothing much that can be used to compare to US, UK, Canada, Australia, New Zealand and South Africa where there are established bodies specialized in plain language who conduct researches on how clarity can be enhanced in legislation. One would think since legislation and drafting style used in Nigeria have their origin from the UK, the country would easily adopt to the changes in legislative drafting in the UK.<sup>147</sup> But that is not the case, most of the legislation has not been improved meanwhile, the people who we adopted such legislations from have improved on their laws. Also, this issue is not discussed to a large extent in Nigeria.

#### **4.2 First strategy: adequately plan the draft**

For every successful document or issue, planning plays a key role in its success. Aside from planning, it has been established above that Nigerian drafters are not given ample time enough to plan the draft, neither are they given exhaustive information pertaining to the contents and requirement of the draft. This all fall under the planning of the draft.<sup>148</sup>

Every good plan begins with understanding and analysis of instructions. As stated above in the legislative drafting paragraph, understanding the requirement of the draft is vital. This

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<sup>146</sup> M Mousmouti, 'Effectiveness as an aid to Legislative Drafting' (2014)2 Loophole, 18

<sup>147</sup> Ibid

<sup>148</sup> Ibid

goes to the root of the policy, the reason for the policy; does it aim to correct a wrong, improve on already existing laws etc. because, failure to properly translate policy into appropriate legislation adversely affects the policy.<sup>149</sup> It will be completely different. For example, a policy was aim at stopping soliciting sex for money and the drafter do not fully comprehend the policy and goes ahead and drafted that one cannot solicit sex for money on the street. Probably because that is where it is prominently instigated in Nigeria but that changes the whole agenda. This is to say one can solicit for sex indoors, but not on the street. Thus, the nature of drafting instructions determines the product. It determines whether the policy will be properly understood, analyzed and ultimately translated into legislation having the desired regulatory effect.<sup>150</sup>

The more inadequate the drafting instructions the more the need to plan the draft as this is an opportunity to mend inefficiencies of the stage by filling in the gaps of the instructions. Planning makes identifying the main goals and principles possible which is crucial to the existence of the legislation, and serve as the link between problems identified, government policies and the means chosen to properly address them.<sup>151</sup>

Planning stage of a legislation is difficult in Nigeria for two major reasons first, drafting is decentralized to reduce the burden on a group because drafting could be a cumbersome process. Therefore, less efforts is dedicated to planning the draft as the consultant producing the first draft knows it is not the final copy, present it to the drafting office who believe their job description is to edit, second, the use of lay drafts.<sup>152</sup> This practice is insufficient because, it misleads drafters, confuses the role of the instructor and the drafter, and raises difficulties of construction. They distort policy and drafting processes as drafting is undertaken long before the drafting offices are instructed to draft. To be sufficient, drafting instructions must

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<sup>149</sup> VCRAC Crabbe, 'The Role of the Parliamentary Counsel in Legislative Drafting' 13 <[www.unitar.org/opg/dfm](http://www.unitar.org/opg/dfm)> accessed 20 November, 2022.

<sup>150</sup> Michael Dauda, 'Plain Language In Drafting Legislation In Nigeria: The Possible Benefits' (*University of London*, 2016) < <https://sas-space.sas.ac.uk/9261/1/LLM%20Dissertation%20Final%202016%20-%20Student%20No.%201441558.pdf>> accessed 12 July 2023.

<sup>151</sup> Ibid

<sup>152</sup>Xanthaki (n55) 34.

contain sufficient background information, principal motive of the legislation, how to achieve them, legal implications, difficulties envisaged.<sup>153</sup> Legislation will be much more efficient if more time is dedicated to the planning stage. The time should be considered invested because, the quality of product is heightened.<sup>154</sup>

#### 4.2.1 Follow the rules of simple drafting

There are rules of simple drafting and when rules are laid down, it is presumed they are meant to be used or followed as guidance. Nigerian legislation uses traditional language. For example, section 39(1) of **Public Procurement Act 2007** provides that “*Notwithstanding the provisions of this Act, the Bureau may issue Certificate of No Objection upon conditions hereinafter prescribed.*”<sup>155</sup> In plain language, this could simply be stated as “*Despite the provisions of this Act, the Bureau may issue Certificate No. Of no Objection upon conditions stated below.*” The trend in most jurisdiction is to simplify legislation by drafting in plain language. Rules of simple drafting are all geared towards simplifying legislation and this part proves that if applied to drafting legislation in Nigeria, clarity, understanding and accessibility will be greatly enhanced. And there will be no need for bulky text because the words will be reduced to simplicity. Stated below are the well-known or advisable rules of simple drafting.<sup>156</sup>

#### 4.2.2 Use conversant words

The fear most drafters and lawyers on the other fence, constantly critiquing the use of plain language is that it would make the legislation loose its substance and touch of class once familiar words are used in drafting.<sup>157</sup> However, unfamiliar words do create confusion sometimes because they are often ambiguous and several meanings could be derived from one word. Ambiguous is one thing a legislation should not be.<sup>158</sup>

Unfamiliar words and jargons should be avoided. This does not mean familiar words should take precedence over precise words rather, words in common usage should be preferred over those users will find difficult to understand without interpretation or

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<sup>153</sup>Xanthaki, *ibid* 147

<sup>154</sup> D. Elliott, ‘Getting Better Instructions for Legislative Drafting’, Just Language Conference, Pre-Legislative Clinic on writing laws, 21 October 1992, Victoria, British Columbia, 8-9

<sup>155</sup>Public Procurement Act 2007, s.39 (1).

<sup>156</sup> Michael Dauda, ‘Plain Language in Drafting Legislation in Nigeria: The Possible Benefits’ (*University of London*, 2016) < <https://sas-space.sas.ac.uk/9261/1/LLM%20Dissertation%20Final%202016%20-%20Student%20No.%201441558.pdf>> accessed 12 July 2023.

<sup>157</sup> See per Justice Clerk in *Boyce Motor Line Inc. v. United State* 342 U.S. 37 (1952); per Lord Dilhorne in *Black-Clawson International limited v. PapierwerkeWaldhof Aschaffenburg AG* (1975) AC 591.

<sup>158</sup>Xanthaki (n55) 90.

explanation. Such words are avoided even if they are not difficult, the fact that they are not used in everyday speech is enough grounds to put them out of use.<sup>159</sup> That is the reason why plain language is criticized for not being dignified enough to the standard of legalese. It is the search for dignity that leads drafters away from simplicity and clarity into pomposity and use of expansive vocabularies that prove difficult to understand.<sup>160</sup> Words stated below should be preferred:

*Table 1 Use Conversant Words*

<u>Archaic words</u>	<u>Plain language</u>
Discontinue	Stop
Accomplish	Do/Finish
Elucidate	Explain/Describe
Strategized	Plan
Modification	Change

#### **4.2.3 Use short sentences**

It has always been the culture when writing to make use of short sentence so that the meaning of what one is trying pass out is not lost. Long sentences make readers bored and require extra time and care with right imputation of punctuations and other aspects of structure. Besides, ideas expressed in long sentences can get lost in flurry of words. It becomes difficult for the users to understand at first reading.<sup>161</sup> Experts do not agree on the precise average sentence length, but it seem, 20-25 words per sentence is okay. Adem captures the link between sentence length and comprehensibility when he said, when drafters exceed this limit, particularly with complicated materials, they should check the sentence carefully as its

<sup>159</sup> Asprey (n27)14

<sup>160</sup> Ibid .90

<sup>161</sup> The Law Reform Commission of Victoria, Report No.9 'Plain English and the Law: Guidelines for Drafting in Plain English'33; Wydick suggests less than 25 words. See RC Wydick, Plain English for Lawyers (5th edn. Carolina Academics Press 1998)36; Asprey thinks it is counterproductive to specify a length. Asprey (n27)106.

structure may be unduly complex. He notes, “It is this complexity and not the length of the sentence that leads to incomprehensibility.”<sup>162</sup>

#### **4.2.4 Use present tense**

Legislation speaks at the moment it is being read. Adem notes that “Because legislation is meant to be of continuing application, it must be written and construed as if it is speaking when it is being read.”<sup>163</sup> Unless there is any special reason for using any other tense, plain language recommends present tense.

#### **4.2.5 Use active voice**

Aside being clearer and shorter, active voice makes clear the identity of the legal subject. Hence, it is preferred over the passive voice which usually is longer, hides the identity of the legal subject and creates difficulty of understanding. So, unless it is deliberate like “when the thing done or to be done is important and the doer or the identity of the doer is unknown or immaterial,” it is better to use the active voice.<sup>164</sup>

#### **4.2.6 Avoid Legalese**

The word legalese means the technical and formal language of a legal document. However, legalese could be interpreted to mean words that are used in a legal document that cannot be interpreted by a lay individual.<sup>165</sup> Lawyers are faulty in this. They feel the need to explain themselves in verbose wording and expansive vocabulary, some to entice their client, other to make an impression that fits their legal might. The use of such vocabulary often breeds confusion. Especially when it is used interchangeably in a document. Legalese is unnecessary because they add little or no legal substance.<sup>166</sup> These result of this unnecessary use of legalese starts from institutions that train lawyers. They should be avoided because they give

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<sup>162</sup> DT Adem, *Legislative Drafting in Plain English*, (Lexis Nexis 2010)1; J Barnes, ‘The Continuing Debate about ‘Plain Language’ Legislation: A Law Reform Conundrum’ (2006)27(2)83-132, 83.

<sup>163</sup> Ibid

<sup>164</sup> Annetta Cheek, ‘Defining plain language’, (2010) 64 *Clarity*

<sup>165</sup> D Greenberg, ‘*The Techniques of Gender-Neutral Drafting*’ in Stefanou and Xanthaki (n15) 63-76, 65-66.

<sup>166</sup> RC Wydick ‘Plain English Lawyers’ (1978) 66(4) *Cal L. Rev.* 727,739.

a false sense of precision and sometimes create an ambiguous and dangerous gap in analysis.<sup>167</sup> Identifying them is necessary legalese take the various forms and how they can be avoided or words to substitute with. They include:

➤ **Double or triple synonyms**

These are examples of the use of unnecessary words-two, three or more-where one can serve. For example, null and void, cease and desist, give, devise and bequeath. This form is caused by the mixed linguistic history of legal language.<sup>168</sup> The use of double or triple synonyms is now traditional as most of the words are assimilated into English language and need no explanation.

➤ **Compound Construction**

It is the use of group of words or expression when one word would do. This has been a traditional style of drafting but could be avoided with simply replacing those words with one word.<sup>169</sup>

*Table 2 Compound Construction*

<b><u>Archaic Words</u></b>	<b><u>Plain Language</u></b>
As a consequences of	Because of
By virtue of the fact that	Because
Enter into an agreement	Agree; contract
For the purposes of	To; for
In connection with	About
Within the meaning of	Under

<sup>167</sup> Ibid

<sup>168</sup> Ibid

<sup>169</sup> Evergreen Writing Center, (*evergreen.edu*, 2022) <  
<https://www.evergreen.edu/sites/default/files/writingcenter/handouts/grammar/compoundcomplex.pdf>>  
 accessed 12<sup>th</sup> July 2023.

➤ **Foreign Languages**

Originally, legislation was drafted in Latin and French hence, a lot of Latin and French terms are still used in legislation drafted in English language. Many words like juror, robbery, conviction, infant, pardon and damages have assimilated into English language and cause no problem of understanding.<sup>170</sup> But words like mandamus, certiorari and habeas corpus subpoena', 'estoppel', etc. are still in use in spite of being difficult to understand because of their technical meanings and the believe that they lack suitable replacements. The use of foreign expressions, no doubt, affects effective communication and should be avoided.

➤ **Archaic Words**

They are considered traditional now because they are no longer in general use. They are unnecessary, superfluous, and cumbersome and further complicates the language of legislation. They can be avoided.

*Table 3 Foreign Languages*

<b><u>Archaic Words</u></b>	<b><u>Plain Language</u></b>
Aforementioned	This, that, named earlier
Execution	Sign
Hereinabove	Above
Lessee	Tenant
Same	It, that
Save	Except

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<sup>170</sup> Law Reform Commission of Victoria (n105) 20; <<https://www.Oxforddictionaries.com/words/archaic-words>> accessed 20 November 2022.

#### 4.3 Third strategy: Traditional legal form of expression to avoid

It is advisable to use simpler expression where they will be suitable for use and not longer and verbose expression. Particularly where simpler expressions can be used in their place. A few expressions in common usage in Nigeria which are now considered traditional are listed below with their suggested replacement. It is argued that if such expressions are replaced with simpler form, clarity understand ability and accessibility of legislation will be enhanced.

*Table 4 Traditional Legal Form*

<b><u>Archaic Words</u></b>	<b><u>Plain Language</u></b>
An application made by a corporation under subsection (1)	The application
Notwithstanding anything to the contrary contained in the XYZ Act	Despite the XYZ Act
An appointment shall not be called in question on the ground that	An appointment is not invalid merely because
A person who has attained the age of 18 years	A person who is 18 or over
Section 5 of this Act (or the more modern version “section 5 above”)	Section 5
Notwithstanding any law to the contrary	Despite

When these traditional forms of expressions are avoided, legislation will be clearer, understandable, and more accessible.

#### 4.4 Fourth strategy: visual aid to legislative interpretation

Conventionally, words were the only tools used in drafting so even where words were inadequate, they were still used which always ended up confusing rather than assisting users. Plain language drafters put themselves in users’ shoes. They think of their drafts, what it means to users, users’ reaction and how they can make legislation easier, understandable and accessible. Today, the trend is to use all devices available in drafting legislation provided they convey information more intelligently and intelligibly.<sup>171</sup> Aids to understanding are

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<sup>171</sup> In *Namaimo (City) v Ranscal Tracking Ltd* (2000) SC 13 where the Supreme Court of Canada relied heavily on the purpose of the legislation in construing it.

devices like explanatory materials and finding aids which are not merely linguistic but are equally useful in enhancing clarity and accessibility of legislation. They include:

#### 4.4.1 Graphic Designs

Graphics convey meaning. Using them in Nigeria will give users ideas as well as guide them in complex legislation. As Elliot notes “It is easy to get lost in a series of complex provisions. An explanatory line diagram can help paint the big picture so that readers can find a road map out of the confusion.”<sup>172</sup> The commonly used graphics include maps, charts, tables and pictures. These devices are in great use in Australia, Canada, New Zealand, South Africa, UK and US. Maps and charts are rarely used in legislation in Nigeria. Tables are mostly used in schedules but they can also be used within the provision of a section, clause or paragraph. Pictures signs are mostly used in traffic legislation.<sup>173</sup> In Road Traffic (Traffic Lights) (Federal Capital Territory, Abuja) Order where picture signs is used, clarity, understanding and accessibility is enhanced.

#### 4.4.2 Finding Aids

Using finding aids in legislation is indeed an indication of drafting with users in mind.<sup>174</sup> Drafting with the user in mind brings out creativity in drafting and encourages new innovations that ensure intended information reach users clearly, precise and unambiguous. If the following finding aids which are widely used in UK, US, Australia, Canada and New Zealand are introduced in Nigeria, legislation will be clearer and more accessible.<sup>175</sup>

- Road-map clause

This is useful in long legislation to enable users find their way round the legislation as it describes the organization and specific provisions of a legislation.<sup>176</sup> It is not in use in

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<sup>172</sup> Elliott, D.C. ‘Tax Drafting Conference Tools for Simplifying Complex Legislation’ 27-29 November, 1996 Auckland, New Zealand 4.

<sup>173</sup> D Elliott, ‘Using Plain English in Statutes’ (Clarity’s submission to the Hansard Society for Parliamentary Government, June 1992) 15.

<sup>174</sup> Per Simmon LC in *Bonitto v Fuerst Bros Co Ltd* (1944) AC 75; In *Stein v O’Hanlon* (1965) AC 890,904, Lord Reid notes that the expression is not yet part of English language.

<sup>175</sup> Ibid

<sup>176</sup> *Pepper v. Hart* (1993)1 All ER 42, 50.

Nigerian but if used, it aids users in finding provisions and give them directions for specific matters in legislation. Thus, it will enhance accessibility of legislation.

- Readers guide

Also, not in use in Nigerian. Using it will indeed aid users find their way and understand the contents of long and complex legislation. For example, it was used in Social Security Bill, 1990 (Australia) where it was thought necessary because the bill had over 800 pages longwinded, it will be useful in drafting long bills like the Petroleum Industry Bill which spans through several hundreds of pages.<sup>177</sup>

#### **4.5 Drafting legislation in local dialect**

Upon several research articles as to the need for Nigerian legislation to be drafted in the three major languages for easy read and understanding by people who could not comprehend English language, even when the legislation is drafted in plain language; it was discovered that, not much has been written on drafting legislation in Yoruba, Igbo and Hausa. It will be cumbersome and consume a lot of money to construct. This may lead to segregation amongst other tribes or ethnicity that would wasn't their legislation to be drafted in their local language. Thus other jurisdictions like China, drafting their legislation in Mandarin<sup>178</sup> could not be compared to Nigeria because Mandarin is widely spoken in China but in Nigeria, there are other languages and we have three major languages in Nigeria. Thus there is no unified language to compose the legislation. Thus, it is not advisable or needed for a legislation to be drafted in a local language or the major tribes in Nigeria because it is not cost effective and breeds disunity.

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<sup>177</sup> Ibid n 162

<sup>178</sup> Igor Szpotakowski, Zuzanna Koranic, '*Chinese Law Research Guide*' (December 2020) <[https://www.researchgate.net/publication/350103723\\_Chinese\\_Law\\_Research\\_Guide](https://www.researchgate.net/publication/350103723_Chinese_Law_Research_Guide)> accessed 18 October 2022.

## CHAPTER FIVE

### THE BENEFITS OF PLAIN LANGUAGE IN NIGERIAN LEGISLATION, SUMMARY FINDINGS, RECOMMENDATIONS AND CONCLUSION

The effort to make Nigerian legislation clearer, understandable and accessible has hit a crescendo; in this Chapter which set out in clearer terms the benefits of plain language in legislating drafting while also turning down the curtain with the summary, findings, recommendations and conclusions of the study.

#### **5.1 Benefits to users**

The users of legislation cut across various individuals and classes of people in a particular jurisdiction. They vary from lawyer, to non-lawyers, educationalist to non-educationalist. Average reader to the layman who just understands the Basic English language and a legislation must strike a balance covering almost every individual who can read to be able communicate its content to all without exception, are subject to the rule of law. When a legislation is drafted in plain language, to become comprehensible to both lawyers and non-lawyers.<sup>179</sup> Thus, the probability of its content being misunderstood is reduced a bare minimum. The fear that once legislation is drafted in plain language, the services of legal practitioners would not be sort after is a mere fallacy that does not bare weight.<sup>180</sup>

Legislation are inherently complex and require legal knowledge and interpretation therefore, non-lawyers will always need lawyers to explain the consequences of materials. Law is technical and not mere men who are not lawyers could stand in an open court to facilitate the proceedings of a matter but rather seek the services of a lawyer. Butt notes, “Readers must beware of assuming that because they can understand the text, they can understand the legal issues that arise from the text.”<sup>181</sup> But the fact remains that plain language communicates

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<sup>179</sup> P Butt, ‘Legalese versus Plain Language’ (2001)35 *Amicus Curia* 28, 31.

<sup>180</sup> Michael Dauda, ‘Plain Language in Drafting Legislation in Nigeria: The Possible Benefits’ (*University of London*, 2016) < <https://sas-space.sas.ac.uk/9261/1/LLM%20Dissertation%20Final%202016%20-%20Student%20No.%201441558.pdf>> accessed 12 July 2023. 52

<sup>181</sup> *ibid*; Butt (n67)104.

legislation better as legislation are easier to read and understand than those drafted in traditional style and this has been proved by way of research, by experts.<sup>182</sup>

Also, it is cost effective. When information contained in a legislation is clear and accessible to users it reduces the need for legal advice and litigation. Frivolous litigation burdens the court and waste the precious time of the court to attend to matters that are vital and worthy for court determination. Legislation drafted in traditional style imposes unnecessary costs on users as an interpreter is often needed. However, as legislation in plain language is clear and accessible to those directly affected by it and they can identify their rights and duties, compliance is enhanced and the legislation itself is effective. Though this may affect certain professionals in executing their duties and no longer gaining some financial strength to the profession, it is pertinent to note that the faith of the legislation goes beyond finances but understanding. Xanthaki notes that plain English serves efficiency because it ensures legislation are easier and faster to read and because they are written in straightforward, direct, precise, clear, and intelligible language, queries are reduced.<sup>183</sup> Similarly, Butts notes that “plain language increases the ‘efficiency’ with which readers assimilate and understand legal documents. With increased efficiency comes cost savings”.<sup>184</sup>

Even the interpreters of the law, judges have found it difficult in understanding some wording in the legislations which they are mandate by the prescription of their job title to explain the law written by some legislators.<sup>185</sup> This is evident in 2007 *BISMAG LTD V AMBLINS LTD*, Justice Open Shaw overseeing the trial of 3 alleged ‘cyber-terrorist’ said, “The trouble is I don’t understand the language. I don’t really understand what a website is.” An expert

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<sup>182</sup> ibid 209

<sup>183</sup>Xanthaki (n74)13.

<sup>184</sup> Butt (n166) p.31.

<sup>185</sup> M Cutts ‘How to make laws easier to read and understand,’ <[www.clearest.co.uk](http://www.clearest.co.uk)> accessed 24 December 2022

had to explain to the judge such terms as ‘broadband’, ‘dial-up’ and ‘browser’.<sup>186</sup> This to prove that this is further need for plain language in drafting out legislation in this current age.

Per the words of Lord Diplock in 1983, he said “absence of clarity in legislation is destructive of the rule; it is unfair to those who wish to preserve the rule of law; it encourages those who wish to undermine it. There need be no greater motivation for the use of plain language than to strive for clarity in the law for the benefit of all.”<sup>187</sup>

## 5.2 Benefit to legislators

The legislators as well as drafters in their quest to establish a well-defined and productive draft of a legislation, it is advisable to make use of plain language and this have proved to be advantageous to the drafters because once these documents are drafted in plain language, it would not be cumbersome to the drafters and thus easily readable and editing the documents would not be much work; cross referencing where the proper terminologies in archaic language was used in the right senses and tenses.<sup>188</sup>

Correspondingly, because of the difficulty in comprehending the terminologies as well as words that are out of use, it becomes difficult for the people who are to scrutinizing the legislation to avoid such task. This leaves the bill or legislation implemented without proper procedure followed and that is why in Nigeria most bills that are pass into law are found wanting for one error or another.<sup>189</sup> Conclusively, a poorly drafted legislation or one in traditional style waste legislator’s time in debates and well as in parliament when discussing a bill, it take longer time and out of frustration the bill is passed and perhaps that explains why,

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<sup>186</sup> *Bismag Ltd v Amblins Ltd* (1940)1Ch 667,687.

<sup>187</sup> Mackinnon LJ’s complain about the Trade Marks Act 1938 in *Bismag Ltd v Amblins Ltd* (1940)1Ch 667, 687.

<sup>188</sup> V Knapp ‘Law in Practice’ in A Brazier, (ed) *Parliament, Politics and Law Making: Issues and Developments in Legislative Process* (Hansard Society 2004) 101,105

<sup>189</sup> Barnes (n67) 113

in Nigeria, legislators are most willing to let bills pass without proper scrutiny which ends up clogging the statute book and confusing users.<sup>190</sup>

Another benefit that the legislator would have overusing plain language into drafting a legislation is that, it brings out error that could not easily be avoided when drafting in archaic words. The antiquated language choice by drafting a legislation has no effect in this current day. This era of English language and communication, there is a tendency that for one to have said to have communicated, the message past must have been received and understood by the other party to the conversation. Legislation is all about communication of the law and it is expectations from its citizens who the laws seem to govern but where the content is not understood then communication has not been passed and that defeats the purpose of the legislation.

### **5.3 Benefit to government**

What every government organization or the government in general aim to achieve when setting a law is that the people comply with the law. Thus, compliance is a big factor for government. Once the people rebel against such law then the government have somewhat failed. Plain language encourages compliance, and the government can benefit from this as government has the responsibility to communicate legislation to its citizens whose rights and duties are embedded in them in the simplest and most understanding way that will foster cooperation at the end of the enforcement process. Failure of government to communicate legislation effectively, thus, drafting in the old ways of drafting making it too complex to understand put users at some risk and greatly risk non-compliance and the effectiveness of government programme is affected which is hinged on compliance if not totally but to a reasonable percent (80%). Indeed, having users comply with legislation foster good governance and a healthy relation between the government and the people. It is less time

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<sup>190</sup>Xanthaki (n74) 13.

consuming than having to act against them for non-compliance. Palfrey opines that government policy and bills translated to legislation in plain language, articulate government's goals more clearly and cost government less because both government officials and the public will be more likely to understand the policy's provisions. This also helps the government for quick compliance which if it a policy that would affect the government financial state, such will be done timeously. Saving the government money and energy debating on forums, explain the meaning of legislation after spending money and time to make such laws.<sup>191</sup>

Again, legislation in plain language reduces queries and the likelihood of litigation over meaning. Some of the cases that are found in court are over interpretation of what some content of a legislation means, and this wastes the time of the court since this would be done in plain language and everyone who picks a legislation to read will understand it easily and somewhat avoid repetition of some certain issues again in another legislation. This is seen in ***LABINJOH V. ABAKE***, where the application of the Infant Relief Act was rejected because there was already a local legislation that covered that area.<sup>192</sup>

As a result, cost is reduced, and government would benefit from the reduced cost of complying with legislation and so is the need for interpretation. A case in point is the first plain language regulation, The Federal Character Commission (FCC) regulation on operating ham radios. Before this regulation was issued, there were five staff taking calls and responding to letters on FCC's requirements for operating ham radios. A few months after FCC regulation was issued, queries from the public dropped that all five staff were

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<sup>191</sup> Butt (n67)102; Plain English Campaign [www.plainenglish.co.uk/campaign.html](http://www.plainenglish.co.uk/campaign.html); Plain English Foundation, <https://www.plainenglishfoundation.com/index.php/plainenglish/whatisplainenglish> >accessed 20 November, 2022.

<sup>192</sup>*LABINJOH V. ABAKE* (1924). 5 NLR 33.

transferred to other jobs.<sup>193</sup> This illustrates that plain language, save the government administrative time and cost as government officials as well as judges can focus on other important issues rather answering queries or wasting time on interpretation. Such time and cost can then be dedicated toward more useful ventures.<sup>194, 195</sup>

#### **5.4 Summary of findings**

From the totality of the discussions in this study, it is obvious that the significance of legislative drafting in plain language can no longer be overemphasized. This study, therefore, makes the following findings:

- a) Plain language in legislative drafting is advantageous to individual users, the government and legislators, as information conveyed can be easily utilized without complexities. It saves the judiciary the onerous task of deploy complex cannons of interpretation.
- b) Plain language drafting is of significance to the government as it enhances compliance since the has the responsibility to communicate legislation to its citizens whose rights and duties are embedded in them. Failure of government to communicate legislation effectively put users at some risk and greatly risk non-compliance and the effectiveness of government programme is affected.
- c) Drafting legislation in plain language reduces queries and the likelihood of litigation over meaning and legislative intent. As a result, cost is reduced and government would benefit from the reduced cost of complying with legislation and so is the need for interpretation.
- d) Drafting in plain language suffers setbacks in Nigeria largely because of the country's historical connection to UK, from where a large chunk of its legislation and drafting styles were inherited long before the introduction of plain language drafting.

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<sup>193</sup> Plain Language.gov, (n72).

<sup>194</sup> Richard Wydick 'Plain English for Lawyers' (masterpdf.pro) (105)4; Asprey .36

<sup>195</sup>Wydick (105)4; Asprey (n27)36

- e) The heavy reliance on precedents constitutes a major setback to plain language drafting in Nigeria. Most of the precedents being adopted are manifestly defective in themselves, thereby giving rise to a situation of continued complex drafting standards.
- f) Legislative drafters in Nigeria work under immense time constraints with impulsive instructions. The drafter is allowed little or no time to properly understand and analyze drafting instructions, plan the draft, or subject it to proper scrutiny and testing. Most people are unable to work under pressure, and this pressure has produced shoddy work that will have an impact on the result.

### 5.5 Recommendations

Against the backdrop of the objectives and findings, this study makes the following recommendations for improved legislative drafting in plain language in Nigeria:

- a) Legislative drafters should de-emphasize reliance on precedents and embrace modern legislative drafting in plain language. Moving away from use of precedents will facilitate a shift from the challenges inherent in them, such as use of archaic expressions, long sentences, and use of passive voice, among others. This will facilitate understanding of legislation by citizens and stakeholders such as legal practitioners and the courts.
- b) The legislature at all levels should ensure that there put in place some drafting standards that ensure compliance with plain language drafting. This ensures that new legislation being enacted at both national and state levels do not have traces of traditional archaic drafting styles which are riddled with complexities.
- c) The Nigerian Law Reform Commission and the National Assembly should embark on the revision of existing laws to finetune them into the realm of modern legislative drafting using plain language. This would create an opportunity for a gradual push from the extant traditional drafting through amendments and outright repeals where necessary.
- d) There should be training and retraining of drafters to equip them with requisite knowledge on modern legislative drafting. This would bring them in touch with modern trends in legislative drafting, especially on the use of tenses, punctuation, and syntax generally.
- e) Individuals, groups, or organisations giving drafting instructions to legislative drafters should avoid putting legislative drafters under pressure in the drafting process. Ade-

quate time should be given to drafters to complete their drafts. This is because putting them under pressure has a lot of impacts on the eventual draft and consequent legislation.

## **5.6 Conclusion**

Legislative drafting is an important task that cannot be taken for granted. Its decision and documentation affect the lives of many, if not all concerned within a particular jurisdiction that is governed by this legislation. It is not an easy task as it entails translate policy into legislation in words that can easily be understood and accessible to lawyers and non-lawyers. Thus, as encapsulated in various chapters of this paper, that when a legislation is not drafted in a proper and good foundation following the right process, it could be fatal to the aim of the legislation. There are several ways of drafting legislation and now the advisable way is drafting in plain language. This is an approach that has been adopted by several nations and with this they have been able to achieve much considering the response from the people. There would be lesser cases in court seeking interpretation of some words/terms in the legislation if the legislation is clearly understood. The benefits outweigh that of disadvantages. Though it will be costly to adopt this method and start drafting old legislations existing for years in plain language, but it will be more dangerous to the government, the citizens and the spirit of progress and advancement in the law if an action is not taken towards the plain language direction. That is why drafters cannot rely only on words but must employ every possible device to breach this gap in communication.

Plain language involves much more than plain words and short sentences. It makes words clearer, employs the use of explanatory materials to give ideas, finding aids to guide users, diagrams if possible in a separate document to convey meanings, and intelligent tools to enhance the drafter's work. A combined use of these devices in legislative drafting in Nigeria will definitely make legislation clearer, understandable and more accessible.

Indeed, the hypothesis is proved as the case for using plain language is overwhelming but necessary for development in the legislative and judiciary arm of government. It is as precise as the traditional style and by far easier to read and understand and its benefits greatly outweigh any pitfall that lie in the path of its adoption. This will reduce the rate at which laws are not picked up by citizens but would rather facilitate discussion and obedience of the law.

### **5.7 Contribution to knowledge**

This research has contributed the following knowledge:

1. It has made clear how crucial the Constitution is to the people.
2. It has identified how plane language can be executed in the Constitution of the Federal Republic of Nigeria, 1999.
3. It has provided insight on how beneficial the plane language will to the Constitution and in compliance with international best practices.
4. It has recognize that even if the Constitution is drafted in our local dialect it will not close the gap in drafting in plane language.

### **5.8 Suggested areas for further studies**

The following are suggested areas for further studies:

1. Gender Neutral Legislative Drafting in Nigeria
2. Troubles A Draftsman Face In Current Democratic Nigeria
3. An Analysis of Challenges In Light of the Constitution of Nigeria.

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