POST-LEGISLATIVE SCRUTINY BY THE PARLIAMENT AND CONGRESS IN THE UNITED KINGDOM AND UNITED STATES: COMPARATIVE LESSONS FOR NIGERIA

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ABSTRACT

This dissertation was designed to comparatively examine the practice of post-legislative scrutiny by the Parliament of the United Kingdom and the Congress of the United States. The motivation for the study stemmed from the fact that in spite of being imbued with the requisite tools and constitutional powers of oversight, the Nigerian National Assembly has been unable to effectively deploy those tools and powers for effective legislative oversight, especially with respect to the implementation and impact of laws. Additionally, while post-legislative scrutiny has been institutionalised as part of legislative practice and procedure across a number of legislatures, the concept which is a veritable aid to the oversight function has not been embraced by the National Assembly. The study sought to ascertain the state of legislative oversight and post-legislative scrutiny in Nigeria, examine the practice of post-legislative scrutiny by the Parliament of the United Kingdom and the Congress of the United States, and extract practicable lessons that Nigeria can learn from the practice in both jurisdictions. The justification for the study was hinged on *inter alia*, broadening understanding of post-legislative scrutiny and assisting legislative practice and procedure in Nigeria.

The study adopted the doctrinal legal research methodology which involved theorising and analysing primary and secondary sources of data such as Constitutions, Acts, law journals, case law, textbooks and other materials. The choice of the doctrinal methodology was based on the fact that it was most suitable for the study, especially given the non-empirical nature of the study. The study also applied the comparative legal research approach in its analysis.

In respect of the first research objective, the findings of the study indicated that on a general note, the oversight function of the National Assembly is in a poor state as it has been beset by several constraints that challenge its credibility, utility and relevance. The study also found that in respect of the state of post-legislative scrutiny in Nigeria, Nigeria lacks fully institutionalised mechanisms for the evaluation of the implementation and impact of laws. In respect of the second research

objective, the study found that the Parliament of the United Kingdom has a fully institutionalised framework for post-legislative scrutiny, while in the Congress of the United States, there is a composite utilisation of several mechanisms which align with those of post-legislative scrutiny. In respect of the third research objective, the study found that there are practicable lessons that the National Assembly can learn from both legislatures, all of which can be seamlessly infused into its practice and procedure.

Based on the findings, the study recommended the adoption of post-legislative scrutiny in Nigeria, especially in view of its success in the United Kingdom and the United States which share legislative and other similarities with Nigeria. The study concluded that there is need for the National Assembly to infuse post-legislative scrutiny into its legislative practice in order to strengthen its oversight function that has often been perceived as ineffective, and ensure that laws are implemented as intended and desired impacts achieved.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Modern democracies are characterised by sharing of governmental powers between the legislative, executive and judicial branches of government, and each country's constitution formally structures the separation and interplay of those powers.[1] Such structuring is aimed at forestalling frictions and enabling the seamless execution of the respective powers, the ultimate goal being the proper and coordinated synergy of the institutions and powers of government for the achievement of good governance. As a central branch of government, the legislature is regarded as a predominantly elected body of people that acts collegially and has at least the formal but not necessarily the exclusive power to enact laws binding on all members of a specific geopolitical entity.[2] Depending on jurisdiction, legislatures are variously described as parliaments, assemblies, congresses and so forth, and are usually either unicameral (single chamber) or bicameral (two chambers).

In all systems of government, the legislature occupies a central position in the machinery of governance. As the sole institution of government that is explicitly established to represent the diverse interests of society in government, legislatures promote vertical accountability (to the public at large), and horizontal accountability (across and between other state and quasi-state institutions), and it is precisely because of this attribute that an institutionalised legislature is a defining feature of all established democracies.[3] Around the world, legislatures perform three core functions, to wit: representation, law-making and oversight. Hague et al[4] however expand these

[1] National Democratic Institute for International Affairs, 'Strengthening Legislative Capacity in Legislative Executive Relations,' Legislative Research Series, Paper No. 6 (NDI, 2000).
[2] M Mezey, *Comparative Legislatures*. (Duke University Press, 1979) 6.
[3] Joel D Barkan, 'African Legislatures and the "Third Wave" of Democratization' in Joel D Barkan (ed) *Legislative Power in Emerging African Democracies*. (Lynne Rienner Publishers, 2009) 1.
[4] Rod Hague, Martin Harrop & John McCormick, *Political Science: A Comparative Introduction*. (8th edn, Red Globe Press, 2017) 128. Scholars such as Barkan however assert that legislatures perform four core functions: they represent,

functions by asserting that democratic legislatures have six major functions: (1) representation (which may be formalistically, symbolically, descriptively, substantively or collectively); (2) deliberation (on the floor of the legislature, via committees, or both); (3) legislation; (4) authorising expenditure (the power of the purse); (5) making governments; and (6) oversight. Notwithstanding the expansion (which in any case is interrelated), the efficient and effective performance of the core functions of representation, law-making and oversight essentially defines a legislature and speaks to its influence and strength in governance. In some legislatures, these functions have been carried out with less precision than required, especially in climes where factors such as executive overreach and prebendal politics are prevalent.[5] The existence of such factors invariably leads to ineffective representation, rubber-stamping, and contentment with rapid law-making without recourse to the implementation and impact of laws. As a result, there is mostly the prevalence, in democracies or systems of government with such legislatures, of increasingly bulky statute books with ineffective laws– laws that are mostly not implemented, not implemented as intended by the legislature, or which do not positively impact the polity they are designed to operate in. When weighed against the backdrop of poor legislative oversight, the cumulative effect is an admixture of ineffective laws and ineffective legislatures.

Of the three core functions of legislatures, oversight is arguably the only function that enables the legislature to keep an eye on the activities of government and its agencies, as well as on the implementation and impact of laws. As one of the cornerstones of democracy, oversight represents a process by which the legislature monitors the quality of work of the government regarding implementation of laws, development plans, and budgets that have been previously adopted by the legislature; it is a means for holding the executive branch accountable for its actions and ensuring

legislate, exercise oversight, and (legislators acting individually) perform the function of constituency service. See Barkan (n 3) 6-7. These seemingly discrepant classifications and typologies notwithstanding, it is arguable that cumulatively, all the functions performed by legislatures and legislators flow centrally from the core functions of representation, law-making, and oversight.

[5] JY Fashagba, 'Legislative Oversight under the Nigerian Presidential System.' *The Journal of Legislative Studies* [2009] (15) (4) 439.

that it implements policies in accordance with the laws and budget passed by the legislature.[6] The oversight process provides the legislature with information it requires to amend, strengthen or repeal and re-enact laws.[7] Effective legislative oversight is therefore key to the integrity of democratic systems and transparency of government and as such, the robust monitoring of the executive by the legislature is regarded as an indicator of good governance as it is the only process through which the legislature can ensure a balance of power and assert its role as the defender of the people's interests.[8] Carrying out legislative oversight effectively is mostly a difficult (but not impossible) endeavour because apart from the fact that it puts the legislature into an adversarial relationship with at least one portion of the executive branch, it requires: (a) information about executive branch activities, (b) the legislative capacity to process that information, (c) legislative will to act, and (d) the power to back up demands for improvement/access/responsiveness.[9] In Nigeria, while the National Assembly possesses the requisite tools and constitutional powers to undertake effective oversight, the tools and powers have not been effectively deployed due to constraints such as executive interference, internal conflicts, inexperience of legislators, high rate of turnover of legislators, and most of all, compromise by the legislature.[10] The result has been the positioning of the oversight function as a hunting dog rather than as a watchdog, with profoundly adverse implications for other legislative functions and governance in general, and the frequent labelling of the National Assembly as an ineffective legislature.[11]

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[6] Agora Portal for Parliamentary Development, 'Parliamentary Function of Oversight.' *Agora Portal* (n.d.) <https://www.agora-parl.org/resources/aoe/parliamentary-function-oversight/> accessed 20 September 2023.

[7] Grace A Arowolo, 'Oversight Functions of the Legislature: An Instrument for Nation Building.' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* [2010] (1) 28.

[8] Open Government Partnership, 'Legislative Oversight.' *Open Government Partnership* (Washington, D.C., n.d.) <https://www.opengovpartnership.org/glossary/legislative-oversight/> accessed 20 September 2023.

[9] Johnson and Nakamura 1999, cited in Omolulu Fagbadebo, 'The Legislature in a Presidential System: Structure, Functions, and Expectations.' In: Omololu Fagbadebo and Mojeed OA Alabi (eds) *The Legislature in Nigeria's Presidential Democracy of the Fourth Republic: Power, Process, and Development*. (Springer, 2023) 16.

[10] Fashagha (n 5) 440; Rick Stapenhurst, Kerry Jacobs & Oladeji Olaore, 'Legislative Oversight in Nigeria: An Empirical Review and Assessment.' *The Journal of Legislative Studies* [2016] (22) (1) 2.

[11] Ejikeme J Nwagwu, 'Legislative Oversight in Nigeria: A Watchdog or a Hunting Dog?' *Journal of Law, Policy and Globalization* [2014] (22) 21; Adebola R Bakare, 'Legislative Effectiveness in Nigeria's National Assembly: An Institutional Assessment Approach.' *NILDS Journal of Democratic Studies* [2020] (1) (1) 79; AA Tobi, GI Ayodeji & BH Odalonu, 'An Assessment of the Oversight Role of the National Assembly, 1999-2019.' In: FA Aremu and AR Bakare (eds) *Two Decades of Legislative Politics and Governance in Nigeria's National Assembly*. (Palgrave Macmillan, 2021) 189.

Although the concept of legislative effectiveness is primarily linked to choices of legislative design and drafting[12] (which are ultimately aimed at ensuring that laws produce desired results), it extends further to the institution itself. Thus, legislative effectiveness extends beyond the realm of effective laws to the way and manner in which the legislature performs its functions generally. In recent times, the drive for effective laws and legislatures has led to the development of a process for the evaluation of the functioning of laws in terms of their implementation and impacts. This evaluative process is termed post-legislative scrutiny. As an emerging dimension within the oversight role of legislatures, post-legislative scrutiny (PLS) is a process that enables legislatures to assess the functioning of laws by examining whether the laws work, how they work, and the effects that occur in practice after the laws enter into force.[13] PLS is designed to ensure that the policy objectives of laws are adequately met and possibly surpassed, and it does this through the deployment of several mechanisms that aid legislative oversight.

The need to carry out PLS (as opposed to pre-legislative scrutiny)[14] stems from the desire to have effective laws and legislatures, especially as some legislatures have been content with adding new laws to the stockpile of existing laws, without such concerns as the way and manner in which laws are implemented, the impacts of laws, and whether or not policy objectives have been achieved.[15] Amongst others, PLS has the effect of detecting the level of implementation, performance and impact of enacted laws, keeping the executive branch in check, and significantly enhancing legislative oversight. As a nascent concept without a universal model, PLS has been applied differently by legislatures around the world, with some utilising peculiar indigenous

[12] Maria Mousmouti, 'Effectiveness as an Aspect of Quality of EU Legislation: Is it Feasible?' *The Theory and Practice of Legislation* [2014] (2) (3) 309.
[13] LJ Knap, RV Gameren, VDV Sankatsing, J Legemaate, RD Friele & Nivel 2022, 'The Impact of Ex-post Legislative Evaluations: A Scoping Review.' *The Journal of Legislative Studies* [2023] 1.
[14] As defined by Lynch and Martin, pre-legislative scrutiny is "a process whereby a legislative committee scrutinises draft bills and reports back to the ministry sponsoring the legislation; it is designed to enhance the capacity of the legislature to influence government-sponsored legislation." Catherine Lynch and Shane Martin, 'Can Parliaments be Strengthened? A Case Study of Pre-legislative Scrutiny.' *Irish Political Studies* [2020] (35) (1) 138.
[15] Samuel Oni, Faith Olanrewaju & Oluwatimilehin Deinde-Adedeji, 'The Legislature and Law Making in Nigeria: Interrogating the National Assembly (1999-2018).' In: Joseph Y Fashagba, Ola-Rotimi M Ajayi & Chiedo Nwankwor (eds) *The Nigerian National Assembly*. (Springer Nature, 2019) 16; A Heywood, *Politics*. (3rd edn, Palgrave Macmillan, 2007).

practices, and others adopting some mechanisms of PLS.[16] The Parliament of the United Kingdom and the Congress of the United States straddle between these categories. Yet in some others, the practice or semblance of PLS appears to be vague. As the practice of PLS appears to be quite strange to Nigeria's legislative practice and procedure,[17] it is pertinent to study the workings of the concept in legislatures (such as the Parliament of the United Kingdom and the Congress of the United States) where it essentially has good footing. A comparative analysis goes beyond familiar arrangements and assumptions, and offers an opportunity for discovering a wider range of alternatives, as well as the virtues and shortcomings of practices in systems under comparison.[18] The choice of the Parliament of the United Kingdom and the Congress of the United States for comparative research is based on the following indices or relationships: (1) Nigeria shares its colonial heritage with the United Kingdom (as its former colonial master); (2) Nigeria's legal system and legislative drafting style were modelled after that of the United Kingdom; (3) Nigeria's Presidential system of government was modelled after that of the United States, which both still practice; (4) Nigeria and the United States are both federal states; (5) Nigeria, the United Kingdom and the United States are all contemporary democracies; (6) Nigeria and the United States have a federal Constitution; and (7) Nigeria, the United Kingdom and the United States have bicameral national legislatures.

The context in which the foregoing is situated prompted this research. This research is undertaken to comparatively examine the practice of PLS by the Parliament of the United Kingdom and the Congress of the United States of America, in order to gain practical insights into the methods adopted by these legislative houses. This is done in a bid to extract valuable and practicable lessons that the Nigerian National Assembly can learn from both legislative houses,

[16] Sarah Moulds and Ying H Khoo, 'The Role of the People in Post Legislative Scrutiny: Perspectives from Malaysia and Australia.' *Journal of International Studies* [2020] (16) 3.
[17] DC Ogbu, 'Post Legislative Scrutiny as a Mechanism for Effective Legislation.' *International Journal of Legislative Drafting and Law Reform* [2021] (10) (1) 17.
[18] GA Almond, GB Powell, KJ Strøm & RJ Dalton, *Comparative Politics Today: A World View*. (8th edn, Pearson, 2006).

and propose the adoption of practices that are compatible with Nigeria's legislative practice and procedure.

1.2 Statement of the Research Problem

Around the world, legislatures are viewed as symbols of democratic authority, and are essentially defined by the extent or degree to which they efficiently and effectively perform their core functions of representation, law-making and oversight. The oversight function has been variously described as a critical component of good governance, an instrument of nation building, and the cornerstone of democracy. In settings where the function is performed efficiently and effectively, it ensures executive compliance with the content and intent of laws, promotes transparency, good governance and accountability, and asserts the power, influence and authority of the legislature as a defender of the interests of the citizenry. Where it is poorly performed, the reverse is the case. To enhance legislative oversight and guarantee the effective implementation and broad impact of laws, legislatures around the world have infused PLS as part of their practice and procedure. Nigeria suffers the problem of poor implementation of laws partly due to the ineffectiveness of legislative oversight of the executive (as the function has mostly been abused by legislators through its weaponisation and the over-concentration in most cases, on the scrutiny of financial accounts) and the absence of an institutionalised system of PLS. In the Parliament of the United Kingdom and the Congress of the United States, PLS essentially has good footing. Against this background, this dissertation comparatively examines the practice of PLS by the Parliament of the United Kingdom and the Congress of the United States, with a view to drawing valuable and practicable lessons that the Nigerian National Assembly can learn and adopt.

1.3 Research Questions

This dissertation attempts to answer the following research questions:

1. What is the state of legislative oversight and PLS in Nigeria?
2. How is PLS practiced by the Parliament of the United Kingdom and the Congress of the United States?
3. What useful lessons can Nigeria learn from the practice of PLS in the United Kingdom and the United States?

1.4 Aim and Objectives of the Study

The aim of this research work is to comparatively examine the practice of PLS by the Parliament of the United Kingdom and the Congress of the United States, with a view to drawing valuable and practicable lessons that the Nigerian National Assembly can learn and adopt.

The research has the following objectives:

1. To ascertain the state of legislative oversight and PLS in Nigeria.
2. To examine the practice of PLS by the Parliament of the United Kingdom and the Congress of the United States.
3. To extract and recommend for adoption, useful lessons that Nigeria can learn from the practice of PLS in the United Kingdom and the United States.

1.5 Scope and Limitations of the Study

The scope of this dissertation is defined primarily by its title. It examines PLS as practiced by the Parliament of the United Kingdom and the Congress of the United States, vis-à-vis the Nigerian National Assembly. It adopts a comparative approach to the study, and focuses on national rather than regional, state or subnational legislatures in the countries of study. In its analysis of the practice of PLS, the research focuses on ex-post evaluation of primary rather than subsidiary legislation. Although the research may examine the process of carrying out PLS in conjunction

with the executive branch or other agencies (of government and otherwise), its main focus is on that carried out or conducted by the national legislatures under study.

The research was limited by the paucity of literature on PLS in Nigeria and the United States of America, which paucity is however quite understandable given that PLS is still a developing aspect of legislative practice and procedure. The paucity of literature did not however adversely affect the quality and results of the research as the researcher was able to make effective use of available literature which were sufficient for the purpose of the study.

1.6 Significance of the Study

The research carried out in this dissertation is important for the following reasons. Firstly, the research makes a valuable contribution generally to existing literature on PLS. Given the novelty of the concept as well as the paucity of comparative research on the subject, this research can assist researchers, practitioners, policymakers and legislators globally who may want to carry out or take the benefit of a comparative analysis of the practice of PLS across national legislatures. Secondly, the research makes a valuable contribution to the body of literature on PLS in Nigeria, the United Kingdom and the United States. In the United States, there is paucity of research specifically on PLS as the ex-post practice there is not termed PLS. In Nigeria, the concept is not well known. The results of this research will broaden understanding of the peculiar practice in the United States, and will be useful in Nigeria to legislative students, legislative drafters, legislators, researchers and policymakers who will have a bird's eye view of PLS practices in other legislatures and the lessons that can be learned especially in respect of fostering effective laws and legislatures. Finally, the analysis in this dissertation can assist future policy, law, and legislative practice and procedure in Nigeria, particularly with regard to the transformation of legislative practice, procedure and oversight. It is hoped that the results and recommendations of this study will be highly beneficial to legal practitioners, Judicial Officers, legislative drafters, legislators, scholars and researchers,

the Nigerian Law Reform Commission, the National Assembly of Nigeria, policymakers, the generality of the citizenry, and legislatures in other climes.

1.7 Research Methodology

Legal research refers to the systematic finding or ascertainment of the law on an identified issue within an identified legal system, with a view to arriving at a justifiable legal solution or towards making advancement in the understanding of law.[19] To effectively carry out legal research, various methods and methodologies may be employed. To forestall semantic confusion, Henn et al made a distinction between "method" and "methodology" by asserting that "method" refers to the range of techniques that are available for the collection of evidence about the social world, while "methodology" concerns the research strategy as a whole.[20] Legal research methodology is classified into two types: doctrinal and non-doctrinal. The doctrinal methodology is an approach to legal research that provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty, and in some cases, predicts future developments.[21] It is library-based research which is premised on legal doctrine and deals with the interpretation of legal texts or series of facts based on legal principles. The non-doctrinal (or socio-legal) methodology on the other hand is an empirical enquiry into the social dimensions of law, and aims primarily at revealing gaps (if any) between legal idealism and social reality; it aims at highlighting gaps which exist between statutory law and the 'law-in-action,' and in the process, it reveals the factors that sustain the scale and intractability of attaining the goals which the law set out to achieve as well as impacts on social behaviour. Of the two types, the doctrinal legal research methodology is deemed fit to be adopted as the ideal methodological construct for this dissertation. The choice of the doctrinal approach is based on the fact that it is

[19] Bethel U Ihugba, *Introduction to Legal Research Method and Legal Writing* (Malthouse Press Limited, 2020) 4.
[20] Matt Henn, Mark Weinstein & Nick Foard, *A Critical Introduction to Social Research* (2nd edn, Sage, 2006) 10.
[21] Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research.' *Deakin Law Review* [2012] (17) (1) 101.

the most suitable approach that will enable the researcher to properly research on applicable laws and literature relevant to the research, especially given the non-empirical nature of the research. Additionally, the choice is premised on the fact that the methodology focuses on legal concepts, principles and existing legal texts (such as statutes, case law and other legal sources) which this dissertation will significantly examine and utilise in its analysis. Being expository in nature, this dissertation makes use of primary and secondary sources of information which in this context include the Nigerian Constitution, Acts, Laws, law journals, textbooks, reports, conference papers, law reports, legal treatises, commentaries on statutes and so forth.

1.8 Chapter Analysis

The dissertation is divided into five chapters. Chapter one introduces the research. It presents a background to the research, as well as the research problem. Questions which the research seeks to answer are also presented. The chapter also contains the specific aim of the research, its objectives, scope and limitations, significance of the study, as well as a chapter analysis.

Chapter two deals extensively with the concept of PLS. It analyses its meaning, traces its history/evolution, examines its theoretical underpinnings and principles, and details its stages/phases. The chapter equally contains an analysis of other relevant concepts, a review of literature relevant to the research, and the theoretical framework for the research.

Chapter three takes on an analysis of PLS in Nigeria, the United Kingdom and the United States as carried out by their respective legislatures. It analyses how PLS is carried out by the National Assembly of Nigeria, the Parliament of the United Kingdom, and the United States Congress. Through this analysis, the chapter unveils the unique approaches to PLS adopted by these legislatures.

Chapter four extracts and reveals lessons Nigeria can learn from the United Kingdom and United States models of PLS. It does this by thoroughly analysing the approaches adopted by the national legislatures under study, and juxtaposes them against the Nigerian model in a bid to reveal

valuable and practicable lessons that Nigeria can learn, and make adjustments where necessary or applicable.

The dissertation ends in chapter five. The chapter contains a summary of research findings, recommendations, contribution to knowledge, suggested areas for further research, and a conclusion.

CHAPTER TWO

CONCEPTUAL CLARIFICATION, LITERATURE REVIEW AND THEORETICAL FRAMEWORK

This chapter examines the concept of PLS. It analyses its meaning, traces its history/evolution, examines its theoretical underpinnings and principles, and details its stages/phases. The chapter also analyses other relevant concepts and contains a review of literature relevant to the research as well as the theoretical framework for the research.

2.1 Conceptual Clarification

2.1.1 Post-Legislative Scrutiny

Post-legislative scrutiny (PLS) is a process that extends beyond the usual framework of legislative scrutiny in respect of drafting bills, to legislative impact assessment. As an emerging dimension within the oversight role of legislatures, post-legislative scrutiny is a process, instrument or mechanism of the legislature which assesses whether or not the provisions of a legislation, its subsidiary legislation or a set of legislation have entered into force, as well as their impacts. It is designed to ensure that policy objectives are adequately met and possibly surpassed. The Law Commission of England and Wales defined PLS in the following way:

> A broad form of review, the purpose of which is to address the effects of legislation in terms of whether intended policy objectives have been met by the legislation and, if so, how effectively. However, this does not preclude consideration of narrow questions of a purely legal or technical nature.[22]

For Moulds and Khoo, PLS is "most commonly used to refer to a process of parliamentary-led review of enacted legislation, designed to evaluate the implementation and effectiveness of the law and through this process, and in this way, improve the overall quality of parliamentary law making."[23] Knap et al assert that PLS assesses the functioning of legislation by examining whether the legislation works, how it works, and the effects that occur in practice after a law enters into

[22] Law Commission of England and Wales, *Post-Legislative Scrutiny*. (Cm 6945, 2006).
[23] Moulds and Khoo (n 16) 2.

force, and that this evaluation is carried out either systematically (for example, on the basis of an evaluation clause in the law) or on an *ad hoc* basis.[24] In its London Declaration on Post-Legislative Scrutiny, the Westminster Foundation for Democracy expressed the view that PLS works "as a safeguard, protecting core constitutional values such as representative democracy, legal certainty and the rule of law," and that it involves "monitoring and evaluating if laws are benefitting citizens as originally intended, with the potential to *inter alia* increase legislators' focus on implementation and delivery of policy aims, and improve government accountability."[25]

Vrieze[26] analysed the concept of PLS in two senses: a stricter sense and a broader sense. He asserts that in its stricter sense, PLS looks at the enactment of the law, whether the legal provisions of the law have been brought into force, if secondary legislation has been enacted, how courts have interpreted the law, and how legal practitioners and citizens have used the law. This sense, he notes, is more focused and is a more purely legal and technical review because it examines how a piece of legislation is working in practice. In a broader sense, he notes further that PLS looks at the impact of legislation, whether the intended policy objectives of the law have been met and how effectively. These categorisations bring forth two dimensions of PLS posited by Vrieze that he recommends to legislatures: (a) to evaluate the technical entrance and enactment of a piece of legislation (the monitoring function); and (b) to evaluate its relationship with intended policy outcomes (the evaluation function).

On his part, Caygill[27] states that the main aims of PLS that follow from the monitoring and evaluation functions are: (a) to assess whether legislation is functioning as intended and to offer solutions if not; (b) to increase focus on the implementation of legislation within government; and (c) overall, to produce better legislation. These aims essentially serve as pointers to the rationale

[24] Knap et al (n 13) 1.
[25] Westminster Foundation for Democracy, 'London Declaration on Post-Legislative Scrutiny.' *WFD* (London, n.d.) <https://www.wfd.org/approach/post-legislative-scrutiny/> accessed 5 October 2023.
[26] Franklin De Vrieze, *Post-Legislative Scrutiny: Guide for Parliaments.* (Westminster Foundation for Democracy, 2017) 11.
[27] Tom Caygill, *Post-Legislative Scrutiny in the UK Parliament: The Post-Legislative Series, 1.* (Westminster Foundation for Democracy, 2021) 7.

for PLS in legislative practice. For centuries, legislative practice virtually centred on representation, legislation and oversight, and the practice in respect of these functions has essentially been to draft, introduce, debate on and enact bills without recourse to their subsequent implementation, and further, to their societal impacts. As noted by Vrieze,[28] parliaments devoted a large part of their human and financial resources to the process of adopting legislation but overlooked the review of implementation of legislation. He further notes that:

> Implementation is a complex matter depending on the mobilisation of resources and different actors, as well as the commitment to the policies and legislation, coordination and cooperation among all parties involved. Implementation does not happen automatically and several incidents can affect its course, including: changes in facts on the ground, diversion of resources, deflection of goals, resistance from stakeholders and changes in the legal framework of related policy fields. Implementation of legislation and policies may also be undermined by power asymmetries, exclusion, state capture and clientelism.

The effective implementation of laws by the executive branch has remained a central challenge that confronts legislatures around the world, and essentially undermines their effectiveness. The situation which was made worse by the "pass it and forget it" style of law-making by some legislatures has become a serious matter requiring legislative intervention. As noted by the Nigerian House of Representatives in one of its Legislative Agendas,

> Legislative and executive programmes, policies, resolutions and laws made by the National Assembly are often not efficiently or effectively implemented by the executive branch. Further legislative intervention therefore becomes necessary in order to implement laws passed by the National Assembly and detect and correct problems when they arise…[29]

Ancillary to the challenge of implementation by the executive branch is the issue of lack of political will, as well as advertent and inadvertent ambiguity of some provisions in laws which obscure legislative intent, hamper seamless comprehension, and ultimately forestall implementation. As argued by Ogul, "a thought-out, well-drafted law offers no guarantee that the

[28] Vrieze (n 26) 11.
[29] Legislative Agenda of the Nigerian House of Representatives, cited in Oladipupo O Adebutu, *Good Governance through Effective Legislator-ship: Legal and Constitutional Benchmarks for Measuring Performance of Legislators*. (Legismiths Law Firm, 2018) 65.

policy intentions of legislators will be carried out. The laws passed by the Congress are general guidelines sometimes deliberately vague in wording.…"[30] Despite these challenges, Vrieze[31] posits that there are four overarching reasons why legislatures are compelled to monitor and evaluate the implementation of legislation: (a) to ensure that the requirements of democratic governance and the need to implement legislation in accordance with the principles of legality and legal certainty has been met; (b) to enable the adverse effect of new legislation to be apprehended easily and expeditiously; (c) to support a consolidated system of appraisal for assessing how effective a law is at regulating and responding to problems and events; and (d) to support improvements in legislative quality by learning from experience both in terms of what works and what does not, and in terms of the relationship between objectives and outcomes.

The initiation of or need to carry out PLS by legislatures may be triggered by a number of factors. The factors include: (a) representations being made to a legislative committee from individuals or organisations that a piece of legislation needs to be reviewed due to a particular policy impact; (b) publicity in the media indicating that PLS is required; (c) a sunset clause or a statutory review period being included in legislation requiring it to be revisited by the legislature; (d) members of the judiciary commenting that a piece of legislation should be revisited; (e) a Bill being passed containing a requirement that the Government must report to the legislature on a particular provision; (f) a petition being brought forward calling for a review of current legislation in a subject area; (g) a legislative committee deciding that it will undertake regular scrutiny of the implementation of a law; and (h) a legislative committee inquiry being undertaken into an issue which includes an examination of current legislation.[32] PLS brings a new dimension to legislative practice, which is that legislatures have the right and responsibility to oversee, monitor and evaluate the implementation of laws and their impacts. It emphasises the point that it is the overall

[30] Ogul (1976), cited in Ishaya S Habu, *Research and Lawmaking in the Legislature: Concept, Principles, Process and Impact in Nigeria*. (Faith Printers International, 2019) 3.
[31] Vrieze (n 26) 11.
[32] Ibid, 18.

responsibility of legislators not only to see that political intentions of legislation are achieved by voice votes or majority mandates, but to also ensure that legislative intentions and objectives of bills (laws, when passed) are achieved.[33] Apart from deepening democracy across jurisdictions, PLS creates new frontiers for accountability on the part of the legislature and executive, reduces ambiguity, makes legislation fit for purpose, improves the overall quality of legislation, and keeps legislatures relevant and in tune with the dynamics of society. As noted by Ogbu, drafting errors, vagueness, ambiguities, inconsistencies, contradictions, unforeseen circumstances, unintended consequences, and implementation challenges in legislation can be corrected through PLS.[34]

2.1.1.1 Tracing the Evolution of PLS

Although there is perhaps no proper record or account of the history or evolution of PLS, it is known that the concept gained prominence and momentum around the early 2000s. PLS is essentially an offshoot of the Better Regulation movement in Europe and America in the 1990s and early 2000s that was aimed at developing policies and legislation that were subject to ex-ante and ex-post evaluation, and which achieved their objectives. At the time, European countries were criticised for churning out excessive and poorly drafted legislation that inordinately regulated businesses and citizens. Better Regulation was therefore a process of designing policies and laws in ways that enabled the achievement of their objectives at minimal cost; it was a way of working to ensure that political decisions are prepared in an open, transparent manner, informed by the best available evidence and backed by the comprehensive involvement of stakeholders.[35]

Using strategic planning, impact assessment, consultation and evaluation as its main tools, Better Regulation in Europe aimed at preparing and adapting European Union policy and legislation in knowledge of its expected economic, environmental and social impacts, avoiding unnecessary burdens and red tape for citizens, businesses and public authorities. It was both an

[33] BR Atre, *Legislative Drafting: Principles and Techniques*. (3rd edn, Universal Law Publishing Co. Pvt. Ltd, 2011).
[34] Ogbu (n 17) 45.
[35] E Golberg, ‘‘Better Regulation’: European Union Style.’ *M-RCBG Associate Working Paper Series* [2018] (98) 9.

aim and a process setting out how regulations should be prepared, assessed and revised.[36] The initiative was itself a hybrid, combining the American tool of regulatory impact assessment with European strands such as simplification and a standardised approach to measuring administrative costs.[37] Baldwin asserts that the United Kingdom's Better Regulation rhetoric echoed that which was encountered in the European Union, and that the way to ensure better regulation was seen in terms of the need to develop and apply a series of regulatory improvement tools and policies, chief of which was Regulatory Impact Assessment.[38] On her part, Golberg notes that the assessment of regulation from the design phase to implementation, with public consultation throughout the process, has become systematic.[39] It is arguable that that systematisation birthed PLS which is in itself, impact assessment of legislation. In line with the better regulation initiative, the central objective of PLS is to ensure that there are effective laws in circulation that achieve their policy and statutory objectives. It is fast becoming a systematised legislative process for producing better, efficient and effective laws which are specifically designed through the deployment of special tools, to address current and emerging societal issues and challenges.

2.1.1.2 Theoretical Underpinnings of PLS

PLS essentially draws on two theoretical perspectives: checks and balances, and effective legislation. The principle of checks and balances derives directly from the concept of separation of powers.[40] Baron de Montesquieu had declared: "Every man invested with power is apt to abuse it, and to carry authority as far as it will go. To preserve political liberty, the Constitution should ensure that the power of one branch of government should not be exercised by the same person(s)

[36] Ibid, 3, 9.
[37] JB Wiener, 'Better Regulation in Europe.' *Current Legal Problems* [2006] (59) (1) 452.
[38] R Baldwin, 'Better Regulation in Troubled Times.' *Health Economics Policy and Law* [2006] (1) (3) 203.
[39] Golberg (n 35) 3.
[40] Dean Wells, 'Current Challenges for the Doctrine of the Separation of Powers – The Ghosts in the Machinery of Government.' *QUT Law Review* [2006] (6) (1) 105.

which possess the power of another branch."[41] Although the concept of separation of powers has evolved and has been applied in differing manners, its core objective has essentially remained true for ages. The principle of checks and balances posits that although governmental powers are distinct among the three branches of government, it is imperative to monitor, evaluate or check the activities of each branch so as to forestall absolutism or abuse. This is regarded as a central way of keeping society together. It is in the exercise of the power of the legislature to check on the executive and judiciary that the principle of oversight was birthed: that the legislature has a responsibility to monitor and evaluate the exercise of power by the executive and the judiciary. In respect of the executive branch, scholars posit that the legislature performs oversight functions on the executive to prevent democratic tyrannical tendencies.[42] PLS is in itself, a mechanism within the legislative and oversight role of legislatures. The concept thus rests first on the principle of checks and balances, and then on that of effective legislation.

PLS also rests on the pillar of effective legislation and this reflects significantly on the Better Regulation initiative. PLS has as its central motive, ensuring that enacted legislation is implemented as intended and achieves the objectives for which it was enacted. It aims at the continuous evaluation of enacted laws in order to reform them and bring them into conformity with contemporary demands, thereby making them effective to deal with existing and potential challenges, and achieve set objectives with minimal challenges. Thus, there is the drive to have legislation and legislatures that work or are effective.

Xanthaki asserts that effectiveness reflects the relationship between the purpose and the effects of legislation and expresses the extent to which it is capable of guiding the attitudes and behaviours of target populations to those prescribed by the legislator.[43] In simple terms,

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[41] Baron de Montesquieu, cited in Olusesan Osunkoya and Adeniyi S Basiru, 'The Legislatures, Legislative Oversight and Crisis of Governance in Democratizing Nigeria: A Prebendalist Perspective.' *Inkanyiso: Journal of Humanities and Social Sciences* [2019] (11) (1) 13.

[42] Hassan A Saliu and Adebola R Bakare, 'An Analysis of the Role of the National Assembly in Nigeria's Fourth Republic and its possible reform.' *Studia Politica: Romanian Political Science Review* [2020] (20) (2) 274.

[43] Helen Xanthaki, 'On Transferability of Legislative Solutions: The Functionality Test' in Constantin Stefanou and Helen Xanthaki (eds), *Drafting Legislation: A Modern Approach*. (Ashgate, 2008) 17.

effectiveness expresses the extent to which a law can do the job it is intended to do, and this is regarded as the primary expression of legislative quality.[44] With tools such as clarity, precision and unambiguity, effectiveness of legislation denotes the introduction by legislation, of adequate mechanisms capable of producing the desired regulatory results.[45] Mousmouti notes that effective legislation is the result of complex mechanics in the conceptualisation, design, drafting, implementation and enforcement of the law which requires processes and institutions for regulatory governance and tools to guide legislative design, drafting and implementation.[46] Although the successful implementation of legislation depends on certain factors or structures that are external to the legislature, the legislature may however contribute to implementation by including in the body of legislation, provisions which set up institutions or frameworks to enable implementation. This will ultimately make for ease in implementation by the executive, as well as monitoring and evaluation by the legislature. Thus, the twin pillars of checks and balances and effective legislation on which PLS rests essentially reflect on the central functions of PLS– whether legislation has entered into force or has been implemented, and whether the desired or intended objectives or impacts of the legislation have been achieved or realised.

2.1.1.3 Principles of PLS

PLS holds certain principles that relate to its mandate or rationale, its scope, the participants, the processes involved, and the timeframe for conducting it. Although these principles are not absolute, they serve as guidelines that legislatures can follow for adoption of the practice, and thereafter expand on. The principles as formulated by the Westminster Foundation for Democracy (WFD) are derived from a cross-jurisdictional study of the operation of PLS in select legislatures

[44] Helen Xanthaki, 'Quality of Legislation: An Achievable Universal Concept or an Utopia Pursuit?' in Luzius Mader and Mart Tavres de Almeida (eds), *Quality of Legislation: Principles and Instruments* (Nomos, 2011) 80-81.
[45] Xanthaki (n 43) 6.
[46] M Mousmouti, 'The "Effectiveness Test" as a tool for Law Reform.' *IALS Student Law Reform* [2014] (2) (1) 5.

and are aimed at assisting legislatures in setting up and enhancing PLS practices. The fifteen PLS principles advanced by WFD are grouped under five thematic heads as follows:

1. **Mandate**
    - Parliament has a responsibility to monitor that the laws it has passed have been implemented as intended and have had the expected effects. Therefore, PLS is an important tool for increasing government accountability;
    - Three binding instruments typically provide a mandate for PLS: ministerial undertakings, review clauses in legislation or sunset clauses;
    - Even when no binding commitment to PLS is made during the passage of a bill, parliament should be able to undertake PLS on any matter that it so chooses.

2. **Scope**
    - PLS reviews both the enactment of law and its impact on society, and hence contributes to improve law itself and people's wellbeing;
    - To make use of time and resources in the most effective way, parliament needs a transparent process for identifying the pieces of legislation that are selected for post-legislative review;
    - To understand the implementation and impact of legislation, it is useful to review secondary or delegated legislation at the same time as reviewing the primary Act;
    - PLS provides an opportunity to assess the impact of legislation on issues which cut across different Acts, such as gender or minorities.

3. **Participants**

- Parliament should consider whether responsibility for PLS should lie with its standing (permanent) Committees or with a dedicated body. PLS should be an inclusive process in which all party groups are able to participate;
- For parliament to conduct PLS inquiries effectively, it needs to empower its human resources and enable them to work with appropriate ICT systems and applications. Parliament may consider whether to establish a specialised Post-Legislative Parliamentary Service or to outsource this function to an external independent review panel that must report to parliament;
- Public engagement in PLS enables access to additional sources of information, increases the credibility of the findings and enhances public trust in democratic institutions.

4. Processes

- Inclusion of PLS in the parliamentary rules of procedure contributes to generating clarity, purpose and resources to post-legislative activities;
- PLS processes avoid a simple replay of policy arguments from the time when the merits of the law were debated;
- Effective PLS requires full and timely access to governmental information, and to the views of a wide range of stakeholders, including civil society organisations;
- Parliament should have processes in place to ensure consideration of the findings of PLS so that, where necessary, changes to legislation and policy can be made in a timely manner.

5. Timing

- PLS should generally take place at least three years after enactment of the law in question.[47]

2.1.2 The Legislature

A legislature is a deliberative body of persons, usually elective, who are legally empowered to make, change, or repeal the laws of a country or state; it is that branch of government that possesses power to make laws, as distinguished from the executive and judicial branches of government.[48] As the most representative of the three branches of modern democratic governments, the legislature is the requisite arena in a democratic society for airing national and constituency issues, providing effective representation for constituents, making impactful laws, and overseeing the activities of other branches of government, especially the executive branch. Legislatures have been variously described as "engine rooms of democracy," "pillars of democracy," "fulcrum of democracy,"[49] "cornerstones of a country's democracy," the "eyes, ears and voice of the people,"[50] "the institutionalised manifestation of the people's will or sovereignty,"[51] "symbols of popular representation in politics, and the foundation of both liberal and democratic politics,"[52] amongst other epithets.

The legislature is the most important institution of governance in a democratic state as it mediates and manages the interest of, at least, two major categories of stakeholders–governing (legislators and executive) and non-governing (electorate and opinion leaders) elites–which is important for socio-economic and political development, as well as stabilisation and consolidation

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[47] Franklin De Vrieze, *Principles of Post-Legislative Scrutiny by Parliaments*. (Westminster Foundation for Democracy, 2018). There are arguments in respect of the timeframe for conducting PLS. Some argue that a period of three years is insufficient in view of such issues as delays in assent and implementation, and short maturity period for impact assessment. A proposal of five years is made instead.

[48] Dictionary.com, 'Legislature.' *Dictionary.com* (Detroit, n.d.) <https://www.dictionary.com/browse/legislature/> accessed 6 November 2023.

[49] Habu (n 30) 10.

[50] John Stuart Mill (1962), cited in MM Lawan, 'Corruption and the National Assembly: Subverting Democracy in the Fourth Republic, 1999-2007' in AM Jega, H Wakili & IM Zango (eds), *Consolidation of Democracy in Nigeria: Challenges and Prospects*. (AKCDRT, 2009) 151.

[51] Oyovbaire, 2001 cited in Lawan, ibid.

[52] Rod Hague and Martin Harrop, *Comparative Government and Politics: An Introduction*. (6th edn, Palgrave Macmillan, 2004) 247.

of democracy.[53] Barkan asserts that as the one institution explicitly established to represent society's diverse interests in government, legislatures matter in the context of multiparty politics and democratisation because they are mechanisms for achieving both vertical (downward accountability of the state to the public at large) and horizontal (across and between other state and quasi-state institutions by scrutinising the operations of the executive) accountability of the rulers to the ruled.[54] He submits that it is precisely because legislatures are both representative bodies and instruments for horizontal and vertical accountability that an institutionalised legislature is a defining attribute of all established democracies, and why they contribute to the overall process of democratisation; democratic consolidation—the highest stage of democratisation—cannot be achieved without a developed and powerful legislature.[55] Legislatures are usually either unicameral (one legislative chamber) or bicameral (two legislative chambers), and perform a wide range of functions that may be classified into three core categories, to wit: representation, law-making and oversight. These core categories or functions are analysed below.

2.1.2.1 Representation

Representation is central to the democratic functioning of a legislative body, as a legislature that is not representative of and accountable to the people undermines the nature of democracy in a country.[56] As Barkan notes, legislatures are the institutional mechanism through which societies realise representative governance on a day-to-day basis, and regardless of the type of electoral system by which the members of the legislature gain their seats, the main purpose of individual legislators and the body to which they belong is to *represent,* that is, to *re*-present or mimic the varied and conflicting interests extant in society as a whole.[57] This brings to the fore the concept

[53] Ambily Etekpe, Philips O Okolo & Timipa Igoli, 'State and Government Institutions in Nigeria: A Study of Bayelsa State House of Assembly in the Fourth Republic 1999 – 2012.' *IOSR Journal of Humanities and Social Science* [2015] (20) (3) 17.
[54] Barkan (n 3) 1.
[55] Ibid, 2.
[56] Center for Democracy and Governance, *USAID Handbook on Legislative Strengthening*. (Center for Democracy and Governance, 2000) 7.
[57] Barkan (n 3) 7.

of intersectionality of representation. Intersectionality is a framework that recognises the interconnectedness of socio-political categories and identities. Coined by legal scholar and activist, Kimberle Crenshaw, and rooted in Black feminist theory and praxis, intersectionality explores the role of institutions, culture, context and individual political identities.[58] Although the term originally referred to the intersection of race with gender, it has expanded through its interdisciplinary nature to include other forms of identity. As each person has a multiplicity of identities (race, gender, age, class, religion and so forth), legislators represent their multiple identities (apart from their primary or electoral constituencies) in the legislature. While a legislator must provide effective representation for all those identities, those identities could conflict at intersections with one another, a situation that requires a careful balancing of the competing and conflicting identities. Apart from representing every interest and shade of opinion, the legislature acts as the national forum for expressing public opinion, public grievances and public aspirations. In this wise, Barkan asserts that the legislature is the institutional arena where representatives of competing interests articulate and strive to advance their respective objectives in the policymaking process.[59] Effective representation therefore is the ability to articulate, promote, defend and actualise the popular priorities of a legislator's constituents.

2.1.2.2 Law-making

Law-making is regarded as the hallmark, regime, province or primary function of the legislature. It is the power to make or enact laws through a structured and constitutionally empowered process, and with this power goes also the power to alter or repeal laws. A fundamental requirement for law-making is that the subject matter to be legislated on must be within the legislative competence of the legislature as provided in the constitution or by law. This requirement also applies to such legislative processes as amendment and repeal. Legislatures contribute to the

[58] Suryia Nayak, 'Black feminist intersectionality is vital to group analysis: Can group analysis allow outsider ideas in?' *Group Analysis* [2021] (54) (3) 344.
[59] Barkan (n 3) 7.

making of public policy by crafting legislation in partnership with or independent of the executive and with input from civil society, and then pass such legislation into law.[60] Oleszek asserts that law-making is "any legislature's most basic response to the entire range of national concerns from agriculture to housing, environment to national defence, health to the economy."[61]

2.1.2.3 Oversight

Oversight is a means for holding the executive accountable for its actions and for ensuring that it implements policies in accordance with the laws and budget passed by the legislature; it is the process by which the legislature monitors the quality of the work of the government.[62] Effective legislative oversight of the executive branch is key to the integrity of democratic systems, as it is regarded as an indicator of good governance, and is the process through which the legislature can ensure a balance of power and assert its role as the defender of the people's interests.[63] John Stuart Mill wrote in 1861 that: "…the proper office of a representative assembly is to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which anyone considers questionable; to censure them if found condemnable…."[64] As expressed by Woodrow Wilson, it is the proper duty of a representative body to look diligently into every affair of government and to talk about what it sees; it is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents.[65]

Legislative oversight is important in democratic systems of government in the context of ensuring transparency in government operations and promoting its accountability to the citizens as well as ensuring checks and balances among the different branches of government.[66] In both

[60] Ibid.
[61] Oleszek, 1978 cited in Habu (n 30) 11.
[62] Agora Portal for Parliamentary Development, 'Parliamentary Function of Oversight.' *Agora* (Brussels, n.d.) <https://www.agora-parl.org/resources/aoe/parliamentary-function-oversight/> accessed 28 September 2023.
[63] Open Government Partnership, 'Legislative Oversight.' *Open Government Partnership* (Washington, D.C., n.d.) <https://www.opengovpartnership.org/glossary/legislative-oversight/> accessed 28 September 2023; Agora, ibid.
[64] John Stuart Mill (1861) cited in National Institute for Legislative Studies, *Nigerian State Assembles: A Study of Legislative Activities 2011-2013*. (vol. 5, National Institute for Legislative Studies, 2014) 189.
[65] Woodrow Wilson cited in National Institute for Legislative Studies, ibid, 189.
[66] National Institute for Legislative Studies (n 64) 188.

long-established and new democracies, the legislature is given the power to oversee the government through a number of tools and mechanisms that are typically outlined in the Constitution and other regulatory texts such as the legislature's internal procedures.[67] The most common oversight tools are oversight visits, committee hearings (public/investigative), hearings in plenary sessions of the legislature, the creation of commissions of inquiry, questions, interpolation and so forth.[68] The core objectives of legislative oversight are to: (a) ensure transparency and openness of executive activities; (b) hold the executive branch accountable; (c) provide financial accountability; and (d) uphold the rule of law.[69]

2.1.3 The National Assembly of the Federal Republic of Nigeria

The National Assembly of the Federal Republic of Nigeria is Nigeria's federal legislature located at the Federal Capital Territory, Abuja, the seat of the Nigerian federal government. It is a bicameral legislative assembly composed of a Senate and a House of Representatives.[70] The Senate (headed by a President and Deputy Senate President) has 109 Senators who represent senatorial districts across the federation of Nigeria, while the House of Representatives (headed by a Speaker and Deputy Speaker) has 360 members that represent federal constituencies across the federation of Nigeria.[71] The National Assembly is constitutionally empowered to regulate its procedure, including the procedure for summoning and recess.[72]

The Constitution of the Federal Republic of Nigeria 1999 vests the legislative powers of the country in the National Assembly, which Assembly has power (to the exclusion of the Houses of Assembly of the States) to make laws for the peace, order and good government of the federation or any part of it, with respect to any matter included in the Exclusive Legislative List contained in

[67] Agora (n 62).
[68] Policy and Legal Advocacy Centre, *Guide to Legislative Oversight in the National Assembly*. (PLAC, 2016) 5.
[69] Agora (n 62).
[70] Sections 4(1) and 47 of the Constitution of the Federal Republic of Nigeria, 1999; *A.G. Bendel* v *A.G. Federation & Ors* (1981) LPELR-605(SC).
[71] Sections 48, 49 and 50 of the Nigerian Constitution.
[72] Section 60 of the Nigerian Constitution; *Inakoju* v *Adeleke* (2007) 4 NWLR (Pt. 1025) 423.

Part I of the Second Schedule to the Constitution.[73] Additionally, the National Assembly has power to make laws with respect to the following matters: (a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column opposite thereto; and (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.[74] The National Assembly also has power to legislate on any matter incidental or supplementary to its enumerated powers.

The power of the National Assembly to make laws is limited to subject matters over which it has legislative competence, as assigned by the Nigerian Constitution. Accordingly, if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly will prevail and render the State law void to the extent of its inconsistency.[75] The exercise of legislative powers by the National Assembly is however subject to the jurisdiction of courts of law and judicial tribunals established by law and as such, the National Assembly is constitutionally prohibited from enacting any law that ousts or purports to oust the jurisdiction of courts of law or judicial tribunals established by law.[76] Additionally, the National Assembly is constitutionally prohibited from enacting any criminal law that has retrospective effect.[77]

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[73] Sections 4(1)(2), 4(3) and 58 of the Nigerian Constitution; *Nigeria Employers Consultative Association & Anor* v *A.G. Federation & Ors* (2021) LPELR-54042(CA); *Agbakoba* v *A.G. Federation & Anor* (2021) LPELR-55906(CA); *FRSC* v *Ehikaam* (2023) LPELR-60749(CA); *Airtel Networks Ltd* v *A.G. of Kwara State & Anor* (2014) LPELR-23790(CA); *Government of Plateau State & Ors* v *Nwaokorie* (2014) LPELR-23368(CA); *INEC* v *Musa* (2003) LPELR-24927(SC).

[74] Section 4(4) of the Nigerian Constitution.

[75] See *A.G. Ogun State* v *The Federation* (1982) NCLR 166; *INEC* v *Musa* (2003) 3 NWLR (Pt 806) 72; *A.G. Abia State* v *A.G. Federation* (2006) 16 NWLR (Pt 1005) 265; and *OSIEC* v *Action Congress* (2011) All FWLR (Pt. 567) 622. Where an Act of the National Assembly is enacted outside its legislative competence or powers, such an Act is *ultra vires* the National Assembly. See *Olafisoye* v *FRN* (2004) 4 NWLR (Pt. 864) 580.

[76] Section 4(8) of the Nigerian Constitution. The exercise of the legislative powers of the National Assembly especially with respect to law-making (which includes the amendment or repeal of laws) is essentially discretionary. It cannot be interfered with by other branches of government. As held by the Supreme Court of Nigeria in *President FRN & Anor* v *National Assembly & Ors* (2022) LPELR-58516(SC), "The President has no constitutional or legal right or power to request or compel the National Assembly to amend or make an Act. No part of the Constitution gives him such right or power…"

[77] Section 4(9) of the Nigerian Constitution.

2.1.4 The Parliament of the United Kingdom

The Parliament of the United Kingdom of Great Britain and Northern Ireland (also referred to as the 'British Parliament,' 'UK Parliament,' 'Parliament of the UK,' or 'Westminster Parliament') is the supreme legislative body[78] of the United Kingdom which may also legislate for the Crown Dependencies and the British Overseas Territories.[79] Often referred to as 'the Mother of Parliaments,' it meets at the Palace of Westminster in London, is bicameral, and has three parts: the sovereign (King-in-Parliament), the House of Lords, and the House of Commons. The House of Lords (presided over by a Speaker) is the upper chamber of Parliament which comprises two categories of members– the Lords Temporal (mainly life peers appointed by the King on the advice of the Prime Minister, as well as about 92 hereditary peers) and the Lords Spiritual (comprising about 26 Bishops of the Church of England).[80] The House of Lords formerly performed judicial functions and served as the apex Court of the United Kingdom until the establishment of the Supreme Court of the United Kingdom in 2009. Although the Lords Spiritual and Temporal are regarded as separate "estates," they nonetheless sit, debate and vote together.

[78] The supremacy of Parliament is on the basis of constitutional convention as other bodies that can enact legislation exist in the United Kingdom (UK). For instance, the Privy Council has the ability to enact legislation, and the King can as well assemble a new body at any time and grant it the power to *inter alia* legislate. Parliament can however amend or abolish these bodies at any time with the consent of the King.

[79] The Crown Dependencies are three offshore island territories (the Bailiwick of Jersey, the Bailiwick of Guernsey (the Channel Islands), and the Isle of Man) within the British Isles that are self-governing dependencies or possessions of the Crown. They have their own directly elected legislative assemblies, administrative, fiscal and legal systems, although the UK Government is responsible for certain areas of policy such as defence and foreign affairs. On the other hand, the UK has 14 Overseas Territories (Anguilla, Ascension, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St Helena, Tristan da Cunha, and Turks and Caicos Islands). "The territories operate with differing levels of self-governance, balancing local decision-making with UK responsibilities. The UK Government collaborates closely with the territories on security and defence, and also engages in financial cooperation, providing support to the territories for their economic development and financial stability." "All the Territories have historic links to the UK, and together with the UK and Crown Dependencies, form one undivided realm where the King is sovereign." See David Torrance, 'The Crown Dependencies.' *House of Commons Library* (London, 21 February 2023) <https://commonslibrary.parliament.uk/research-briefings/cbp-8611/> accessed 13 October 2023; The Royal Household, 'Crown Dependencies.' *The Royal Household* (London, n.d.) <https://www.royal.uk/crown-dependencies/> accessed 13 October 2023; Eren Waitzman, 'UK's relationship with its overseas territories.' *UK Parliament* (London, 18 May 2023) <https://lordslibrary.parliament.uk/uks-relationship-with-its-overseas-territories/> accessed 14 October 2023; Philip Loft, 'The Overseas Territories: An introduction and relations with the uk.' *UK Parliament* (London, 20 January 2023) <https://commonslibrary.parliament.uk/research-briefings/cbp-9706/> accessed 16 October 2023; Colonial Laws Validity Act 1865; Statute of Westminster 1931.

[80] See the Appellate Jurisdiction Act 1876, the Life Peerages Act 1958, and the House of Lords Act 1999.

The House of Commons on the other hand is the lower chamber of Parliament, consisting of 650 elected members (including the Speaker and three Deputy Speakers) representing different constituencies. Most Government Ministers (including the Prime Minister) are drawn from the House of Commons, although Ministers may generally be from either the House of Lords or the House of Commons.[81] The Prime Minister and his Cabinet are accountable to Parliament. The House of Commons is responsible for granting money to the government through approval of Bills that raise taxes, and both Houses generally approve decisions made by either House, thus making for checks and balances.

Parliament has a number of functions, which include: controlling national expenditure and taxation; making law; scrutinising executive action; being the source from which the Government is drawn; and debating the issues of the day.[82] By the Scotland Act 1998, the Government of Wales Acts (1998 and 2006), and the Northern Ireland Act 1998, Parliament devolved powers over areas of domestic policy such as housing, health and education to directly elected legislatures in Scotland, Wales and Northern Ireland; while Parliament retains the legal power to continue to legislate on these matters, it does not normally do so without the consent of these devolved legislatures.[83]

Parliamentary sovereignty operates in the UK, and represents the right of Parliament to make or unmake any law whatsoever, with no person (natural or juristic) having the right to override or set aside the legislation of Parliament.[84] The principle of the sovereignty of Parliament protects the constitutional function of Parliament to scrutinise, debate, amend or repeal existing legislation

[81] Charley Coleman and Edward Scott, 'Ministers in the House of Lords: Role and Accountability to Parliament.' *UK Parliament* (London, 20 December 2023) <https://lordslibrary.parliament.uk/ministers-in-the-house-of-lords/> accessed 25 December 2023.
[82] Cabinet Office, *The Cabinet Manual: A guide to laws, conventions and rules on the operation of government*. (1st edn, Cabinet Office, 2011) 3.
[83] Ibid.
[84] *R (on the application of Miller and anor)* v *Secretary of State for Exiting the European Union REFERENCE by the Attorney General for Northern Ireland - In the matter of an application by Agnew and others for Judicial Review REFERENCE by the Court of Appeal (Northern Ireland) – In the matter of an application by Raymond McCord for Judicial Review* [2017] UKSC 5, 15.

or otherwise introduce new legislation, and is founded upon the unique authority Parliament derives from its representative character; Parliament's power to enact legislation is legally unlimited, subject to self-imposed restraints such as those contained in the European Communities Act 1972 and the Human Rights Act 1998. The legislative power of the Crown is exercisable only through Parliament, which exercise of power must be compatible with legislation and the common law.[85]

2.1.5 The United States Congress

The Congress of the United States (also called the 'American Congress' or 'Congress') is the federal legislature of the United States of America. It is bicameral in nature, and is composed of a Senate and a House of Representatives. Congress meets in the United States Capitol Hill, Washington, D.C., which is the seat of the United States Government, and home to the domed United States Capitol, Senate, House of Representatives and the neo-classical Supreme Court of the United States.[86] The United States Constitution vests all legislative powers in Congress,[87] and empowers each House or Chamber of Congress to set its own rules and keep a journal of its proceedings. In addition, while the Senate ratifies treaties and approves presidential appointments, the House of Representatives originates all revenue measures (including appropriation bills), and in impeachments, the House of Representatives prepares and tries the case, while the Senate serves as the court.[88]

Article 1 section 8 of the United States Constitution sets out the powers of Congress, with the most important being the powers to levy and collect taxes, borrow money, regulate commerce with foreign nations and among the states, coin money, establish post offices and post roads, issue patents and copyrights, fix standards of weights and measures, establish courts inferior to the

[85] *R (Miller)* v *Secretary of State for Exiting the EU* [2018] AC 61 ("*Miller*") 45.
[86] JE Zelizer, *On Capitol Hill: The Struggle to Reform Congress and its Consequences, 1948–2000*. (Cambridge University Press, 2004) 5.
[87] Article 1 section 1 of the United States Constitution.
[88] RH Davidson and WJ Oleszek, *Congress and Its Members*. (10th ed, CQ Press, 2006) 25.

Supreme Court, raise and maintain the armed forces, declare war, and "make all laws which shall be necessary and proper for carrying into execution the foregoing powers."[89] This clause which has been described as the "necessary and proper" clause of the United States Constitution permits Congress to make "all Laws which shall be necessary and proper for carrying into Execution," its other powers and the rest of the Constitution.[90] Congress is prohibited from making laws with respect to the establishment of religion, prohibition of free exercise of religion, abridging the freedom of speech, the press, the right to peaceful assembly, or the right to petition the Government for a redress of grievances.[91]

The Senate consists of 100 members, two representing each state regardless of population, while the House of Representatives consists of 435 members representing the fifty (50) States. Each house/chamber of Congress is authorised to "be the judge of the elections, returns and qualifications of its own members."[92] The Constitution authorises the House of Representatives to elect its own Speaker, while the Vice President of the United States is *ex officio* the President of the Senate. The Senate also elects a President *pro tempore*, or "temporary President," to preside when the Vice President is absent; the President *pro tempore*, by custom, is the most senior senator of the majority party.[93]

2.1.6 Perspectives on the State of Legislative Oversight in Nigeria

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[89] Article 1 section 8 of the United States Constitution; MF Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War*. (Oxford University Press, 1999) 18.
[90] Ibid.
[91] 1st Amendment to the United States Constitution.
[92] Article 1, section 5 of the United States Constitution. The provision implies that the Houses/Chambers of Congress are entitled to judge contested elections involving their seats, and are not bound by agreement of the parties or decisions of State tribunals. The determination by a House as to the right to a seat is final, this being considered a non-justiciable political question. See *Roudebush* v *Hartke* 405 US 15 (1972). "Qualifications" has been interpreted by the courts to mean only the age, residence, and citizenship requirements stated in the United States Constitution. See *Powell* v *Mccormack* 395 U.S. 486 (1969). In *United States* v *Comstock* 560 U.S. 126 (2010), the Court held thus: "The Necessary and Proper Clause allows Congress to pass laws that further any of its constitutionally granted powers in a broad manner. It also may enact laws that are based on its wide spectrum of incidental powers that derive from the enumerated powers. Laws may be deemed constitutional if they are convenient, useful, or conducive to the beneficial exercise of the enumerated power. The appropriate standard is a rational connection between the means embodied by the law and the ends represented by the source of federal power."
[93] DR Mayhew, 'Congress as a Handler of Challenges: The Historical Record.' *Studies in American Political Development* [2015] (29) (2) 200.

The National Assembly of Nigeria has become the most controversial of all the three arms of government being the most topical in the discourse of Nigeria's democratic journey.[94] Its activities and the performance of its constitutionally assigned functions have come under intense scrutiny over the years. While there are varied opinions by scholars and commentators on the effectiveness of representation and law-making by members of the National Assembly, the performance of the oversight function has been largely viewed as being inimical to the tenets of democratic rule, the rule of law, and legislative governance. Although there have been attempts by some scholars to correct such an impression, the view of majority of National Assembly researchers is that the oversight function has been performed with far more less will and precision than required, and in some cases, that it has been weaponised by legislators against certain persons and institutions. These perspectives are considered and analysed below in a bid to ascertain the state of legislative oversight in Nigeria, with particular reference to the National Assembly.

Muhammad contends that irrespective of roles performed by the legislature in different contexts, its performance is in most cases affected by factors that are internal to it or externally motivated.[95] This, he notes, is the dilemma of the National Assembly in Nigeria which has been battling to establish itself amidst some challenges, at least, since the inception of the Fourth Republic in 1999. He points out that although scholars have tried to explore such challenges and their motivating factors, the magnitude of the problem makes it deserving of continuous probing especially in view of the fact that since the inception of the Fourth Republic, the National Assembly has faced challenges which tend to rub on its performance, credibility, image and perception in the eyes of the public as well as the level of trust by citizens in the institution. These challenges, he submits, have formed a vicious circle on the activities of the institution as the public often becomes suspicious of any move by the institution even if it is a genuine cause.

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[94] Abubakar O Sulaiman, 'Foreword' in Adebola Rafiu Bakare, *National Assembly and Legislative Effectiveness in Nigeria's Fourth Republic*. (Palgrave Macmillan, 2023) vii.

[95] Abdulrasheed Alada Muhammad, 'The Legislature and Challenges of Institutional Efficiency in Nigeria's Fourth Republic.' *Journal of Management and Social Sciences* [2019] (8) (2) 716.

In carrying out a comparative study of legislative institutions in Nigeria and the United States of America, Hart generally notes that Nigeria's legislative institutions cannot act as adequate checks and balances as they are weak, while the legislative institutions in America are strong and independent.[96] The author observed that the Nigerian situation is common in developing countries, while the situation of American legislative institutions is common among developed countries. Scholars such as Nwagwu argue that legislative oversight in Nigeria has been severally compromised and often misused as a hunting dog, and that the legislature has reduced this all-important function to a mere alarm mechanism that has been used to blackmail or witch-hunt political opponents and extort money from the parastatals and ministries under its supervision for selfish or personal aggrandizement.[97] This view corroborates an earlier study on the oversight function of legislatures and its effectiveness in ensuring good governance in Nigeria.[98] The study found that the oversight function had been compromised many times, and that the legislature utilised the function to extort Ministries, Departments and Agencies (MDAs).

Tom and Attai assert that ordinarily, the National Assembly should balance its oversight function with its lawmaking function in such a way that substantial legislative time shall be allocated to each one, but that in practice, oversight appears to be the major preoccupation of the members of the National Assembly because of its political implications for them as politicians.[99] On his part, Okeke posits that a number of factors are responsible for this anomaly which results in the neglect of the law-making function and accounts for the obsolete state of the bulk of Nigerian laws.[100] He outlines those factors as follows: (a) legislators as politicians would always want to be

[96] Akie Opuene Hart, 'A Comparative Study of the Legislative Institutions in Nigeria and the United States of America.' *Central Asian Journal of Social Sciences and History* [2022] (3) (8) 71.
[97] Ejikeme Jombo Nwagwu, 'Legislative Oversight in Nigeria: A Watchdog or a Hunting Dog?' *Journal of Law, Policy and Globalization* [2014] (22) 16.
[98] Nwagwu (2012) cited in YA Yusuf and FJ Ojoduwa, 'Legislative Oversight and Democratic Consolidation in Nigeria: 1999-2019.' *African Social Science and Humanities Journal* [2022] (3) (2) 60.
[99] EJ Tom and AJ Attai, 'The Legislature and National Development: The Nigerian Experience.' *Global Journal of Arts Humanities and Social Sciences* [2014] (2) (9) 66.
[100] CE Okeke, 'Law Reform Process and Practice in Nigeria: Issues and Challenges.' *International Review of Law and Jurisprudence* [2020] (2) (1) 65.

in the public domain so as to remain politically relevant and legislative oversight is one of the ways through which they meet this egocentric need; (b) legislative oversight is one of the major ways through which the legislators take their own pound of flesh whenever they have a score to settle with the executive; (c) legislative oversight is a lucrative avenue through which the legislators corruptly enrich themselves as legislators often hide under their oversight function to extort money from various government agencies and functionaries appearing before them; and (d) the over-concentration of the legislators on the oversight function stems from the fact that most of them lack the requisite law-making expertise and skills. The findings of Okeke are in agreement with those of Agbedi et al who stated that the effective conduct of oversight duties faces several challenges, such as the following: (a) incompetence of some members of the National Assembly; (b) poor understanding in the core area of service and improper placement of most committee clerks; (c) inexperience of some new legislators; (d) delay in the submission of documents by organisations invited to appear before committees; (e) inadequate basic working tools; (f) poor funding; (g) conflict over jurisdiction arising from too many Standing Committees; (h) placement of legislators in many committees; (i) executive resistance and impunity; (j) dominance of the same political party in both the executive and legislature (party loyalty whittles down open criticism of the executive by the legislators); (k) inadequate funding of oversight activities (which leaves lawmakers vulnerable to the influence of agencies who might want to fill the gap by providing the necessary funds); and (l) deployment and re-deployment of committee clerks.[101]

Stapenhurst et al asserted that "the National Assembly has not delivered effectively on its oversight functions owing to several factors, which include executive dominance, inexperience, internal conflict and high turnover of members," with the conclusion that the National Assembly

[101] FY Agbedi, Fidelis Allen & UO Ukachikara, 'Oversights Functions of the National Assembly in Nigeria: Issues and Challenges.' *International Journal of Research and Innovation in Social Science* [2020] (4) (3) 198-199.

in Nigeria has been compromised.[102] On the issue of executive dominance and interference in legislative oversight, Adibe and Mbaegbu asserted thus:

> The realisation of democratic governance in the presidential system is determined by the extent to which the legislature independently and vibrantly performs its pivotal role of citizens' representation through legislation and oversight. The health of democracy declines when the level playing ground and the capacity for the legislature to effectively influence policy and oversee the executive are lacking. Executive's domination and meddlesomeness in the legislative processes and constitutional functions of the legislative assemblies between 1999 and 2015 weakened the latter's role as citizens' representative in the modern democracy. More often, the legislatures in the both national and state assemblies existed as mere instruments in the hand of the executive for conferring the legitimacy constitutionally required for the implementation of its decisions and such political governance cannot be deemed democratic. The inability of the legislatures to meaningfully impact on policy process and perform their oversight role on the executive thus portends a reversal from democratic to dictatorial governance.[103]

The above view appears to align in some particular with those earlier held by Adamolekun, Onunaiju and Nwigwe. While Adamolekun opined that the oversight function has been turned into an instrument of extortion and collusion, resulting in pervasive weak oversight of the executive at both federal and state levels,[104] Onunaiju asserted that since 1999, the oversight function over government ministries and departments has been more of constant arm-twisting and extortion, and that legislators at all levels have ingeniously turned the function to a bargaining tool for primitive accumulation of unearned wealth.[105] On his part, Nwigwe noted that "since the inception of the Fourth Republic, oversight has not always been founded on altruistic intentions. While public service bureaucrats had accused committees of self-serving supervision, uncooperative Ministers and Directors-General were dragged to committee meeting rooms, allegedly intimidated with accusations of impropriety and asked to play ball, while the obstinate were subsequently dragged

[102] R Stapenhurst, K Jacobs & O Oladeji, 'Legislative Oversight in Nigeria: An Empirical Review and Assessment.' *The Journal of Legislative Studies* [2016] (2) (1) 2.
[103] Raymond C Adibe and Casmir C Mbaegbu, 'Executive-Legislative Relations and Governance Trajectories in Nigeria: The Road Not Taken.' *South East Political Science Review* [2017] (1) (1) 64.
[104] Ladipo Adamolekun, 'Legislative/Executive Relations Since 1999.' *Vanguard* (Lagos, January 30, 2008).
[105] Charles Onunaiju, 'National Assembly: The House on the Mud.' *Vanguard* (Lagos, August 14, 2008).

before the people at public hearings."[106] On her part, Hamalai complained about paucity of time and energy constraints which hinder the oversight duties of legislators, arguing that they prevent detailed scrutiny especially when a problem is complex in nature.[107]

In their study which examined the relevance of legislative oversight in the fight against corruption in Nigeria, Abah and Obiajulu asserted that oversight (the critical aspect of the functions of the legislature) has been severely compromised and often misused.[108] In identifying barriers to oversight functions (such as lack of democratic culture, corruption, and personal ambition, interest and agenda of legislators), Arowolo points out that as a developing country, the capacity of Nigeria's legislature to carry out its oversight function remains weak because legislative role and culture are at their infancy and therefore often confronted by many challenges.[109] Aliyu et al however submit that although the National Assembly is constitutionally empowered to carry out oversight, its performance of the function has not been transparent and efficient because it has been abused over time.[110] They equally submit that the National Assembly oversight function is hampered by a number of challenges such as corruption, party politics, self-serving behaviour, absence of trust, and flexing of muscle for supremacy with the executive organ of government. Okafor notes that against the backdrop of the oversight provision in the Nigerian Constitution (which is aimed at ensuring that public policies are implemented in accordance with legislative intent) prevails persistent cases of poor administration, under performance, corruption, fiscal indiscipline, lack of accountability and arbitrariness in government MDAs, with consequences such as public disillusionment and less confidence in the National Assembly.[111] The author finds

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[106] Pascal Nwigwe, 'Bankole Continues to Stir the Hornet's Nest?' *Saturday Sun Newspaper* (Lagos, May 31, 2008).
[107] L Hamalai (ed), *Committees in the Nigerian National Assembly: A Study of the Performance of Legislative Functions, 2003-2013*. (National Institute for Legislative Studies, 2014) 46.
[108] Nobert Chijioke Abah and Andrew O Obiajulu, 'Relevance of Legislative Oversight in the Fight against Corruption in Nigeria.' *Socialscientia Journal of the Social Sciences and Humanities* [2017] (2) (1) 1.
[109] Grace Ayodele Arowolo, 'Oversight Functions of the Legislature: An Instrument for Nation Building.' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* [2010] (1) 27, 35.
[110] MK Aliyu, Ikedinma H Amoge & BM Ayodele, 'Analysis of the Challenges of Legislative Oversight on Good Governance in Nigeria.' *Developing Country Studies* [2018] (8) (8) 148.
[111] Chukwuemeka Okafor, 'Framework for effective oversight functions of the Nigerian National Assembly: A Reflection.' *AFFRIKA Journal of Politics, Economics and Society* [2017] (7) (2) 125.

that there are low oversight instruments and low capacity of legislators to carry out their oversight functions.

Fagbadebo argues that legislative oversight in Nigeria is not as effective as envisaged in the constitutional provisions, and that this weakness has given rise to worsening governance crisis in the country in spite of abundant economic and human resources.[112] The author opines that the institutional structure of the political systems of the country, especially the dominant party phenomenon, coupled with the personal disposition of the political elites incapacitate the effective exercise of the oversight powers of the legislature. Abegunde asserts that the legislature in Nigeria has been severally criticised for being a puppet of the executive, compromised and often misused as a hunting dog against individuals or groups that are not on the same page with the government.[113] The author further states that despite the oversight functions of the National Assembly, it has severally been accused and found guilty of scandal, most of which were committed while performing the said oversight function as the exercise is perceived as a money-making venture, an opportunity for self-enrichment by members of the committee saddled with the responsibility of performing such assignment.[114]

Similar views expressed by the above scholars on the state of legislative oversight in Nigeria were also expressed by Benson et al,[115] Anthony,[116] Opeoluwa et al,[117] Ejumudo and Ikenga,[118]

[112] Omololu Fagbadebo, 'Interrogating the Constitutional Requisites for Legislative Oversight in the Promotion of Accountability and Good Governance in South Africa and Nigeria.' *Insight on Africa* [2019] (11) (1) 39.
[113] Ola Abegunde, 'Legislature and Democratic Sustainability in Nigeria.' *International Journal of Humanities & Social Science Studies* [2016] (3) (3) 226.
[114] Ibid 231.
[115] KS Benson, ET Olaniyi & KO Lamidi, Executive-Legislature Conflict and Development in Nigeria's Fourth Republic.' *Sokoto Journal of the Social Sciences* [2019] (9) (2).
[116] Obi Emeka Anthony, 'Executive- Legislative Relations: Explaining the Role of the Nigerian Political Environment on Performance of Legislative Oversight.' *International Journal of Academic Management Science Research* [2019] (3) (3).
[117] OO Opeoluwa, DI Oluwatobi & GO James, 'Corruption and Executive Interference in Legislative Oversight in Nigeria's Fourth Republic' in O Fagbadebo and MOA Alabi (eds), *The Legislature in Nigeria's Presidential Democracy of the Fourth Republic*. (Springer Nature, 2023).
[118] KBO Ejumudo and FA Ikenga, 'The Problematic of Legislative Oversight in Nigeria: A Study of Delta State.' *The Indonesian Journal of International Clinical Legal Education* [2021] (3) (2).

Adepoju,[119] and Terlumun.[120] The majority or overwhelming opinion of scholars appears to be that there is poor and compromised performance of the oversight function by the National Assembly, a situation that adversely affects the integrity of the function and which has transcended to other legislative functions. As noted by Muhammad, "a compromised legislature is unfit to perform creditably and this constitutes a threat to democracy and good governance."[121] For Amadi, "Nigerian laws have either been incompetently drafted or badly implemented such that even when they hold transformative promise, they have always failed to deliver."[122] The identified challenges to the effective performance of the oversight function by the National Assembly necessitates the exploration of other measures that can assist or enhance the oversight function. A viable or suitable measure in this regard is the adoption of PLS which is a new dimension within the oversight function that aims at ensuring that laws are implemented as intended by the legislature, and that the statutory objectives are achieved. PLS has the potential to transform the practice of the oversight and other legislative functions, and improve legislative governance generally. As noted by Prof. Abubakar Sulaiman, country experiences show that PLS is taking root as an integral component of parliamentary oversight, and an institutionalised PLS will create the environment for the Nigerian legislature in particular, and the government as a whole, to go the extra mile to ensure that the laws they pass for Nigerians have a real impact on social, economic and political realities.[123]

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[119] Mojisola Elizabeth Adepoju, *An Evaluation of the Oversight Function of National Assembly in the Implementation of Sustainable Development Goals in Nigeria*. (Masters in Parliamentary Administration Dissertation, University of Benin, 2022) 28.

[120] Tyokase Clement Terlumun, 'Executive-Legislature Rift, Corruption and Implications for Nation-Building in Nigeria.' *University of Nigeria Journal of Political Economy* [2020] (10).

[121] Abdulrasheed Alada Muhammad, 'The Legislature and Challenges of Institutional Efficiency in Nigeria's Fourth Republic.' *Journal of Management and Social Sciences* [2019] (8) (2) 725.

[122] Sam Amadi, 'Banditry, Lawlessness, and the Failure of Law Reform in Nigeria.' *TheCable* (Lagos, 10 August 2021) <https://www.thecable.ng/banditry-lawlessness-and-the-failure-of-law-reform-in-nigeria> accessed 10 November 2023.

[123] Samson Atekojo Usman, 'CNA, NILDS insists on impactful laws as critical to nation-building.' *Daily Post* (Lagos, 10 March 2022) <https://dailypost.ng/2022/03/10/cna-nilds-insists-on-impactful-laws-as-critical-to-nation-building/> accessed 2 November 2023.

2.2 Literature Review

Although PLS is essentially a novel concept, it has generated research interest across jurisdictions in view of its prime importance and value. While literature on PLS in some jurisdictions appear to be legion, in others such as Nigeria, there is paucity of literature, given that the concept is yet to be fully embraced or institutionalised. Together, literature on PLS offer profound insights into the dimensions of the concept and its practical operation in legislatures where it has been adopted and applied. It is against this background that related literature concerning this study was reviewed.

Murphy[124] asserts that as representative democracy has come under criticism from populists and advocates of 'participatory democracy', parliaments have responded by expanding their engagements throughout the governance process, and that parliaments around the world are participating in the development of policy proposals including in dialogue with citizens, the shaping of draft legislation, debate and adoption of legislative proposals, in PLS, and in government oversight and audit. The author asserts that PLS can be carried out in a number of different ways, and at different levels of detail, and that this determines whether parliament carries out PLS for all legislation (in which case a light touch approach of formal compliance should be chosen), or if, instead, more in-depth analysis of a selected number of key pieces of legislation is to be carried out.[125] The author also asserts that where PLS extends beyond a formal assessment of legislative implementation (for example scrutiny of if the law has been proclaimed and if required regulations adopted), then a system for selecting legislation for PLS needs to be established.[126] Where PLS on the other hand is mainly focused on assuring that all the necessary formal implementation steps have been taken (as is the case in France), it may be appropriate to centralise the PLS function in the parliamentary administration, or in the legislation committee or

[124] Jonathan Murphy, 'Towards Parliamentary Full Cycle Engagement in the Legislative Process: Innovations and Challenges.' *The Journal of Legislative Studies* [2020] (26) (3) 469.
[125] Ibid.
[126] Ibid, 488.

equivalent; otherwise, PLS should be carried out by the same sectoral committee to which the draft legislation was originally referred for scrutiny, assuring knowledgeable and consistent scrutiny.[127]

On their part, Murphy and Mishura[128] assert that PLS has generated growing interest as a means both for strengthening the legislative process and for permitting legislatures to more efficiently integrate their legislative and oversight functions. They note that engagement throughout the cycle of legislative development, adoption and implementation enables legislatures to ensure that laws are properly implemented and to rectify weaknesses either in original legislative conceptualisation or in executive implementation. They also note that where it is carried out properly, PLS should improve governance and democratic accountability. Using Ukraine as a case to explore the context and challenges for effective PLS in a non-Westminster emerging democracy, the authors affirm that PLS takes place in non-Westminster parliaments and that there is no systemic barrier to its expanded use in non-Westminster- as well as Westminster-model parliaments. They assert that the greater attention paid to PLS in Westminster-type systems (both in parliamentary literature and in parliamentary development practice) is probably due to several factors: (a) the renewed drive for PLS that began around the turn of the century in the British parliament; (b) the predominance of study of Westminster-model parliaments as opposed to other models; and (c) some lack of clarity on the scope of PLS, which renders it difficult to 'translate' to different systems and languages.[129] This notwithstanding, they observe that PLS frameworks are present in divergent parliamentary systems, addressing broadly similar questions of the effective application of laws.

Knap et al[130] hold the view that laws are increasingly being evaluated in many countries by examining the effects in practice once a law enters into force. This situation, they note, has led to an institutionalisation of ex-post legislative evaluation (PLS) which has gained prominence and is

[127] Ibid.
[128] Jonathan Murphy and Svitlana Mishura, 'Post-Legislative Scrutiny in a Non-Westminster Parliament: Opportunities, Challenges and Considerations.' *European Journal of Law Reform* [2019] (21) (2) 20.
[129] Ibid, 34.
[130] Knap et al (n 13) 1-2.

now considered an integral part of regulatory governance. The scoping review of the authors systematically examined the various types of impact of ex-post legislative evaluations and arrived at seven categories which are sometimes interrelated and exist in various degrees, to wit: (a) knowledge and understanding; (b) confirmation of well-functioning legislation; (c) legislative revision; (d) influence on the legislative process; (e) influence on the policy process; (f) influence in the political sphere; and (g) influence on society.

On their part, Moulds and Khoo[131] assert that PLS is a concept that is gaining increasing traction in certain jurisdictions and discourses, and yet remains elusive or largely unknown in others. They further assert that PLS is most commonly used to refer to a process of parliamentary-led review of enacted legislation, designed to evaluate the implementation and effectiveness of the law and through this process, and in this way, improve the overall quality of parliamentary law-making. Further, the authors point out that the term 'PLS' remains unknown mainly among lawyers and political scientists outside of the UK, including in Australia and Malaysia, but that this is not because PLS is absent in these or other jurisdictions; rather, it is because it is described differently and undertaken on an *ad hoc* basis.[132] They note that although the legal framework in Malaysia for select committees exists under the Parliament's Standing Orders, the component of PLS is significantly missing from the existing Standing Orders.[133] In Australia, they however note that PLS exists as an *ad hoc* process because there is no prescribed or systematic approach to pre- and post- legislative scrutiny or a single body charged with initiating or conducting PLS.[134] This view aligns with another study by Moulds on Australia's PLS approach, wherein the author noted that in the Australian context, there are four main triggers for post-enactment scrutiny of legislation: (a) the inclusion of a sunset clause in the original legislation; (b) the inclusion of a

[131] Sarah Moulds and Ying Hooi Khoo, 'The Role of the People in Post Legislative Scrutiny: Perspectives from Malaysia and Australia.' *Journal of International Studies* [2020] (16) 2.
[132] Ibid, 3.
[133] Ibid, 8.
[134] Ibid, 11.

review provision in the original legislation; (c) a specific referral by parliament to an external review body empowered to undertake PLS; and (d) community-initiated parliamentary review.[135]

On his part, Caygill[136] posits that PLS allows legislatures to revisit legislation after it has been enacted to ensure that it is operating as intended, and notes that it is an important task that committees can undertake to ensure that problems can be located and rectified. Vrieze[137] opines that one of the main roles of legislatures is to create laws that meet the needs of the country's citizens, and it is also the role of the legislature to evaluate whether the laws it has passed achieve their intended outcomes. He asserts that PLS refers to the stage at which a legislature applies itself to this question: whether the laws of a country are producing expected outcomes, to what extent, and if not, why not. The author notes that while legislatures devote a large part of their human and financial resources to the process of adopting legislation, it is not uncommon to overlook the review of implementation of legislation, as implementation is a complex matter depending on the mobilisation of resources and different actors, as well as the commitment to the policies and legislation, coordination and cooperation among all parties involved. He states that despite these challenges, there are four overarching reasons why legislatures are compelled to monitor and evaluate the implementation of legislation: (a) to ensure the requirements of democratic governance and the need to implement legislation in accordance with the principles of legality and legal certainty, are being met; (b) to enable the adverse effects of new legislation to be apprehended easily and expeditiously; (c) to support a consolidated system of appraisal for assessing how effective a law is at regulating and responding to problems and events; and (d) to support improvements in legislative quality by learning from experience both in terms of what works and what does not, and in terms of the relationship between objectives and outcomes.

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[135] Sarah Moulds, 'A Deliberative Approach to Post Legislative Scrutiny? Lessons from Australia's ad hoc Approach.' *The Journal of Legislative Studies* [2020] (26) (3) 370.
[136] Tom Caygill, 'Legislation under Review: An Assessment of Post-Legislative Scrutiny Recommendations in the UK Parliament.' *The Journal of Legislative Studies* [2019] (25) (2) 295.
[137] FD Vrieze, *Post-Legislative Scrutiny: Guide for Parliaments.* (Westminster Foundation for Democracy, 2017) 7, 11.

Mousmouti[138] expresses the view that PLS enables an assessment of whether laws have met their intended objectives and outcomes, and that it can reveal achievements and errors in the design of legislation, achievements and gaps in implementation, and broader positive and negative impacts that enable or hinder the achievement of regulatory results. In displaying the versatility of PLS, the author advances gender-sensitive PLS and notes that gender-sensitive PLS is PLS with a gender lens, and a strategic tool that can detect the impact of the law on gender equality. The author notes further that it can also reveal the actual impact of legislation on men, women and gender inequalities, make biases, stereotypes and assumptions relating to gender and other characteristics visible, and also make visible, access, participation barriers and data gaps, and improve the effectiveness of legislative initiatives.

Fitsilis and Vrieze posit that PLS constitutes a recent development in parliamentary procedures and practices aimed at strengthening parliamentary oversight on the implementation of legislation, as part of the oversight function of parliament.[139] The authors noted that PLS can be considered a broad concept, and examined the possibility of applying the 15 PLS principles as published by the Westminster Foundation for Democracy (WFD) in order to follow-up on the implementation of Sustainable Development Goals (SDGs) and assess whether PLS is a viable long-term contribution in accelerating the achievement of SDGs. Their research revealed the role of parliaments in SDG monitoring and their contribution to successful implementation, and undertook a comprehensive review of parliamentary involvement which includes common approaches, good practice and challenges that parliaments deal with through the process of achieving a sustainable global framework. The authors highlighted the contribution of PLS as an oversight tool in the implementation of legislation relevant to the implementation of the SDGs.

[138] Maria Mousmouti, 'Gender-sensitive Post-legislative Scrutiny in Theory and Practice.' *The Theory and Practice of Legislation* [2022] (10) (3).
[139] Fotios Fitsilis and Franklin De Vrieze, 'Parliamentary Oversight of Sustainable Development Goals and the Application of Post-Legislative Scrutiny Principles.' Wroxton 2019 – Working paper, 2.

In developing a comparative study between Chile and the United Kingdom in respect of the functioning of PLS, Toro carried out a comparison in light of compliance with the three standards of effectiveness (the implementation of the norm), efficacy (the extent to which legislative action achieves its goal), and efficiency (costs and benefits brought by the norm), in a bid to understand how both countries achieve those goals.[140] Whilst noting that the UK Department for Business, Innovation and Skills (BIS) refers to PLS as one of the three types of ex-post review, together with policy evaluation and post-implementation review (PIR), the author explains that although both post-implementation review and PLS are ways of policy evaluation, they are not synonymous; policy evaluation is the most generic term to refer to a systematic evaluation of a regulatory policy, while PIR is meant to be a complement of the ex-ante evaluation done in the context of an "impact assessment."[141] He thus submits that PIR is then, a "revised version" of the impact assessment, while PLS is a review of how the legislation and the supporting secondary legislation are working in practice. The author concludes his comparative analysis by noting that the UK model is overall a more successful system of PLS.

Vrieze and Fitsilis opine that PLS is an emerging oversight technique which is applied by parliaments to scrutinise implementation and impact of specific laws or legal frameworks.[142] In taking stock of PLS practices in countries in South and Southeast Asia, the authors argue, based on their research results, that PLS can be used to scrutinise complex processes at the national or supra-national level, such as implementation of the SDGs. They conclude that, to the extent that parliaments seek to carry out both dimensions (broad and narrow) of PLS, PLS facilitates continuous improvement of the law itself and policy implementation, thus contributing to increased governance effectiveness and accountability.

[140] Constanza Toro, 'Post Legislative Scrutiny at Parliaments: The Case of Chile and UK.' *Latin American Legal Studies* [2018] (3) 293.
[141] Ibid, 294.
[142] Franklin De Vrieze and Fotios Fitsilis, 'Applying Post-Legislative Scrutiny to the Analysis of Legislation and SDGs in South and Southeast Asia.' *Journal of Southeast Asian Human Rights* [2020] (4) (1) 1.

In his research, Ogbu submits that PLS is an essential tool for effective legislation because legislation cannot remain effective in perpetuity in the face of societal changes despite the professionalism infused into its drafting.[143] He points out that Nigeria has no institutionalised systematic mechanism to automatically trigger evaluation of the impacts of laws enacted by the legislature in the past to determine their effectiveness, even as he asserts that most Nigerian laws are spent, outdated, obsolete and anachronistic.[144] He recommends that PLS should be carried out at regular intervals on subsisting legislations by a designated committee of both Houses of the Nigerian National Assembly to correct identified errors in legislation and possibly amend legislation where necessary, in a bid to synchronise the legislation with current realities. The author concludes by stating that PLS is worthy of incorporation into the Nigerian legislative practice.

For Dumbuya, PLS is a tool that has allowed Parliaments to become directly involved in monitoring the implementation of the laws it has enacted by way of soliciting feedback from citizens whom the laws are meant to benefit.[145] He notes that while there are parliamentary jurisdictions that make it the mandate of all parliamentary committees to conduct PLS vis-à-vis their oversight functions, others have specific parliamentary committees set up for that purpose. There are, however, as he notes further, some jurisdictions that only conduct PLS on needs basis, and in general, PLS is done either by the Parliament itself or by an independent institution assigned by Parliament with the specific mandate. The author also expresses the view that often, and despite the best of intentions it might have, the focus of Parliament at the time of legislation is to have the law enacted and it rarely pays attention to how well the law is being implemented over time and its resulting positive and negative effects.[146] The author also notes that although the National Assembly of The Gambia has 23 Parliamentary Committees, the National Assembly has not

[143] Debakeme Christopher Ogbu, 'Post Legislative Scrutiny as a Mechanism for Effective Legislation.' *International Journal of Legislative Drafting and Law Reform* [2021] (10) (1) 2.
[144] Ibid, 4.
[145] Alhagie M Dumbuya, **'**Post-Legislative Scrutiny as a Tool for National Assembly Evaluation of the Laws of The Gambia.' *The Parliamentarian: Journal of the Parliaments of the Commonwealth* [2023] (104) (2) 130.
[146] Ibid, 131.

assigned an exclusive mandate to any Committee to evaluate laws, but that however, all Committees are directed to identify, monitor and co-operate with all ministries, departments and agencies in matters relating to their terms of reference, and to receive and review Bills, activity reports, domestic and foreign policies, agreements, strategic plans and other measures and decisions of the institutions under their purview.[147]

Caygill asserts that PLS is one of the core tasks of departmental select committees in the House of Commons and that in the last decade, a more systematic approach to PLS has been taken by both the UK Government and UK Parliament.[148] He points out that there are a number of differences in the way legislation is selected by both Houses of Parliament: in the House of Commons, there is a focus on representations from outside organisations, the production of memoranda and the salience of issues; in relation to the House of Lords, the focus is on its subservient role in the UK Parliament (for example, it (the House of Lords) focuses on: (a) considerations of whether committees in the Commons are likely to undertake PLS, (b) the more technical aspects such as whether the timing is correct, (c) whether it is a major piece of legislation, and (d) whether they have the expertise to do it well).[149] The author also highlights the differences between the two Houses of Parliament in terms of the output of their recommendations which shows that there is a greater focus on legislative style recommendations in the House of Lords, but with generally similar strength between both Houses, suggesting that the legislative style recommendations do not call for large legislative change. He concludes by noting that each House operates its own slightly different system of PLS with limited cooperation, and indicates that this has implications for other bicameral legislatures, especially those yet to introduce PLS formally, in that they need to determine whether to introduce a joined-up system of scrutiny or to have a separate system in each chamber.[150]

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[147] Ibid, 132.
[148] Tom Caygill, 'A Tale of Two Houses? Post-Legislative Scrutiny in the UK Parliament.' *European Journal of Law Reform* [2019] (21) (2) 5.
[149] Ibid, 17.
[150] Ibid.

Fernandes holds the view that PLS is an important process for parliamentarians to understand whether legislation is fit for purpose, is meeting its objective, or impacting certain communities in ways that were not intended, and that while PLS has largely been a parliamentary-led process, civil society participation is critical.[151] The author notes that civil society have important roles to play in the PLS process and that in their interaction with Parliament and Legislators, they can monitor the enactment or impact of legislation to ensure it achieves its objectives. This independent monitoring, Fernandes further notes, is important as legislation is often initiated by the State and often civil society are more aware of the effects of legislation on the people that Parliaments are meant to serve; civil society can more readily engage those people most effected by legislation and identify challenges and opportunities for reform. The author advocates that civil society can also play an important role in ensuring that the design of legislation is comprehensive, effective and make the provisions contained in law more accessible to community members and the general public, and can increase access to data from multiple entities to assess the impact of legislation on community members, often filling data gaps in informing policy and legislation design. The author concludes that expanding PLS to be a framework that is designed for civil society use means that civil society organisations that represent various communities and policy areas can initiate a PLS process outside of government timing and priorities, and can thus compel governments and Parliaments to be more attentive to critical issues including addressing the rights of marginalised and vulnerable communities.[152]

In her research, Onoge analyses the operationalisation of PLS in examining emergency regulations passed by the President of Nigeria in response to the COVID-19 pandemic which led to human rights violations in Nigeria.[153] The study explores a much-needed balance between the

[151] Sophia Fernandes, 'Post-Legislative Scrutiny: Why is this an Important Tool for Civil Society?' *The Parliamentarian: Journal of the Parliaments of the Commonwealth* [2021] (102) (3) 292.
[152] Ibid, 293.
[153] Elohor Stephanie Onoge, 'Monitoring and Evaluating the Impact (Post-Legislative Scrutiny) of Emergency Regulation in Response to the COVID-19 Pandemic: A Case Study of Nigeria.' *IALS Student Law Review* [2021] (8) 39.

COVID-19 regulations and human rights concerns in emergency situations by the legislature's oversight to ensure the perpetuation of democracy. As expressed by the author, given the emerging incidences of human rights breaches during the pandemic in Nigeria, the entrenchment of a robust framework of PLS of passed legislation is an imperative that cannot be ignored; "there is a need for the legislature to have structures that promote the effective application of PLS of primary legislation and delegated or subsidiary legislation as part of the legislative process."[154] The author also notes that Nigeria does not have an adequate system of legislative scrutiny or PLS in place, and that introducing such a system may raise fundamental questions about the relationship between the Executive and the Legislature. She argues that it is imperative that an analysis of the impact of laws passed by the legislature be institutionalised into the legislative process to ensure that the process is consistent with good legislative practice.[155] The author concludes that even though structures exist to trigger PLS, standardised methodologies and procedures are absent and this may be attributable to the absence of political will to operationalise PLS.

Griglio and Lupo hold the view that PLS is not completely new to European parliamentarism, and that in the last few decades, the activity has experienced rapid development, either pushed by supranational trends on better regulation or fostered by national constitutional reforms.[156] They however argue that the involvement of parliaments in the ex-post stage of law-making still remains under-theorised. In carrying out a comparative study of the rules, practices and trends of PLS in the French, Italian and Swiss Parliaments, the authors note that in the three countries, parliament's engagement in the field of PLS has been promoted in response to amendments or proposed amendments of the Constitution, and is in fact based on a fundamental premise– the legislature's capacity to act collectively, as a unitary body, vis-à-vis the other governing institutions.[157]

[154] Ibid, 41.
[155] Ibid, 42.
[156] Elena Griglio and Nicola Lupo, 'Parliaments in Europe Engaging in Post-legislative Scrutiny: Comparing the French, Italian and Swiss Experiences.' *Journal of Southeast Asian Human Rights* [2020] (4) (1) 100.
[157] Ibid, 120.

In their research, Anglmayer and Scherrer examined ex-post evaluation in the European Parliament and its increasing influence on the policy cycle. Exploring its nature, function and impact, the authors observed that the European Parliament has institutionalised its use of ex-post evaluation in the wake of the EU Better Regulation agenda.[158] They noted that the characteristic dual structure of the European Parliament's ex-post evaluation combines a political committee report with a technical supporting study drawn up by Parliament's research service. Reflecting on the manifold purposes of parliamentary evaluation as well as the utilisation of such factors as policy learning and agenda setting in the process, the authors observe that the European Parliament's evaluations have, in some cases, been able to influence the agenda for the revision of existing EU legislation and that this has demonstrated the European Parliament's increasing role and capacity to impact the European Commission's policy cycle.

In exploring PLS in Europe and how oversight on implementation of legislation by parliaments in Europe is getting stronger, Vrieze analyses parliamentary practices in conducting PLS in Germany, Italy, France, Sweden, Switzerland and the United Kingdom against four categories of parliamentary approach in PLS: (a) parliaments as passive scrutinisers have few parliamentary structures, capacity and procedures for PLS and no parliamentary PLS reports; (b) parliaments as informal scrutinisers have few parliamentary structures and procedures but are stronger in terms of their own parliamentary outputs on PLS; (c) parliaments as formal scrutinisers have more developed structures and procedures on PLS but remain weak in terms of outputs and follow up; and (d) parliaments as independent scrutinisers are strong in terms of structures and procedures as well as in terms of reports and follow up.[159] The analysis of the author indicates that

[158] Irmgard Anglmayer and Amandine Scherrer, 'Ex-post evaluation in the European Parliament: an increasing influence on the policy cycle.' *The Journal of Legislative Studies* [2020] (26) (3) 405.

[159] Franklin De Vrieze, 'Post-Legislative Scrutiny in Europe: how the oversight on implementation of legislation by parliaments in Europe is getting stronger.' *The Journal of Legislative Studies* [2020] (26) (3) 427. Vrieze notes that in respect of independent scrutinisers, the "procedimentalisation" of PLS reports is much stronger compared to formal scrutinisers. By "procedimentalisation" is meant that PLS reports are supported by formal procedures providing a debate/voting of the report, for sure in committee, but potentially also in the plenary, thus granting maximum publicity to the activity. See Franklin De Vrieze, *Post-Legislative Scrutiny in Europe: How the oversight on implementation of legislation by parliaments in Europe is getting stronger*. (Westminster Foundation for Democracy, 2020) 18.

the Federal Parliament of Germany is a passive scrutiniser in PLS, the parliament of Italy is an informal scrutiniser, the parliaments of Sweden and France are formal scrutinisers, and the UK Westminster and Swiss parliaments are independent scrutinisers.

Mansaray expresses the view that Sierra Leone is among countries in Sub-Saharan Africa that have not institutionalised PLS in their national legislative processes.[160] He observes that in Sierra Leone, even though structures exist to trigger PLS, standardised methodologies and procedures are largely absent, noting that PLS offers an opportunity towards the development of parliament's internal capabilities as well as ensuring tangible area of delivery within a parliamentary system, with significant implications on the broader governance framework. He observes further that while the generality of Section 93 of the 1991 Constitution of Sierra Leone [Act No. 6 of 1991] created the legal framework for legislative oversight, it is however not conclusive on PLS, even as there has never been a formalised PLS initiated or conducted by parliament. He concludes by noting the following: (a) there is the absence of a codified legal framework for PLS in the Parliament of Sierra Leone; (b) the current configuration of the Fifth Parliament has created inclusivity, political space and parliamentary dynamics that anticipate a legislative space for strengthening PLS; (c) the absence of clearly defined procedures for PLS in parliament, through the 1991 Constitution and the Standing Orders of the House, allows MPs to raise matters on public policy and its implementation; and (d) the urgency on the need to recalibrate the legislative process will provide a conducive atmosphere for the operationalisation of PLS especially with the Committee system.

The reviewed literature has revealed the multi-dimensional importance and value of PLS, irrespective of the legislature in which it is applied. The literature has also shown that PLS is increasingly being adopted and applied by legislatures around the world, thus indicating that it is important for other legislatures to get on board. While some of the literature examined case studies, others carried out comparative analysis. Some others looked at PLS from the viewpoint of its

[160] Yirah Mansaray, 'An Assessment of Post-Legislative Scrutiny in the Parliament of Sierra Leone.' *European Journal of Law Reform* [2019] (21) (2) 112.

relevance to certain topical issues. Still, some considered the operation of PLS in Westminster-type parliaments, while others explored its operation in non-Westminster-type parliaments. Collectively, the reviewed literature beam on some particularly striking issues in PLS which are relevant to this study. It is however noteworthy that none of the reviewed literature explored the operation of PLS in the United States of America. As well, none of the literature carried out a comparative analysis of PLS in the United Kingdom and United States. This dissertation fills these gaps by carrying out a comparative analysis of PLS in the Parliament of the United Kingdom and the Congress of the United States in a bid to extract valuable and practicable lessons Nigeria can learn and apply.

2.3 Theoretical Framework

The Comparative Law Theory is deemed fit to be adopted as the theoretical construct for this dissertation. Although not a distinct body of law, 'comparative law' describes the comparison of various laws.[161] It describes an intellectual activity with law as its object and comparison as its process,[162] and further describes the systematic study of particular legal traditions and legal rules on a comparative basis.[163] To qualify as a true comparative law enterprise, it requires the comparison of two or more legal systems, or two or more legal traditions, or of selected aspects, institutions or branches of two or more legal systems.[164] To more readily identify and compare the various legal systems in the world, a group of jurisdictions may be classified under a generic heading by virtue of having similar characteristics. While there is disagreement as to what those characteristics should be, the key distinguishing features according to Zweigert and Kötz include: (a) the system's historical background and development; (b) its predominant and characteristic

[161] Ralf Michaels, 'Comparative Law' in Jurgen Basedow, Klaus J Hopt, Reinhard Zimmermann & Andreas Stier (eds), *The Max Planck Encyclopedia of European Private Law* (vol 1, Oxford University Press, 2012).
[162] Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law* (3rd rev edn (trans from German by Tony Weir), Clarendon Press, 1998) 2.
[163] Peter De Cruz, *Comparative Law in a Changing World* (3rd edn, Routledge-Cavendish, 2007) 3.
[164] Ibid.

mode of thought; (c) its particularly distinctive institutions; (d) its sources of law and the way it handles these; and (e) its ideology.[165] Zweigert and Kötz further stress that in order for an intellectual enterprise to be considered as a comparative law enterprise, there must be "specific comparative reflections on the problem to which the work is devoted," and that this is best done by the comparatist, stating the essentials of the foreign law, country by country, as a basis for critical comparison, concluding the exercise with suggestions about the proper policy for the law to adopt, which may require him to reinterpret his own system.[166]

As noted by Mousourakis, modern comparative law has progressed through different stages of evolution.[167] Influenced by developments in the biological sciences, linguistics and new theories of social evolution during the 19th century, comparatists tended to focus, at that time, upon the historical development of legal systems in the belief that there exist certain laws of social development common to all societies.[168] In the late 19th century, French scholars Lambert and Saleilles, aspiring for the world unification of law, advocated the search for what they referred to as the 'common stock of legal solutions' from amongst all the legal systems of the civilised world. At the time, comparative law was perceived as a substantive subject which was mainly concerned with unravelling the patterns of legal development and concepts that were common to all nations. During the early years of the 20th century, however, many comparative law scholars, most notably Gutteridge and David, put forward the view that comparative law was no more than a method to be employed for diverse purposes in the study of law– a shift in emphasis from comparative law as a science to the uses of the comparative method in the study of law.

According to Zweigert and Kötz, the primary aim of comparative law, as of all sciences, is knowledge; "it is an *école de vérité* (school of truth) which extends and enriches the supply of solutions and offers the scholar of critical capacity the opportunity of finding the better solution

[165] Ibid, 3-4.
[166] Ibid, 8.
[167] George Mousourakis, 'Comparability, Functionalism and the Scope of Comparative Law.' *Hosei Riron* [2008] (41) (1) 4.
[168] Ibid.

for his time and place."[169] The authors identify four particular practical benefits of comparative law: (a) comparative law as an aid to the legislator; (b) comparative law as a tool of construction; (c) comparative law as a component of the curriculum of the universities; and (d) comparative law as a contribution to the systematic unification of law. The first practical benefit is most germane to this dissertation. On it, Zweigert and Kötz assert that legislators all over the world have found that on many matters, good laws cannot be produced without the assistance of comparative law, whether in the form of general studies or of reports specially prepared on the topic in question. They note that ever since the second half of the 19th century, legislation in Germany has been preceded by extensive comparative legal research, and that this was true when commercial law was unified, first in Prussia and then in the German Empire, and also after the Empire had acquired the necessary legislative powers, of the unification of private law, law of civil procedure, law of bankruptcy, law of judicature (courts system), and criminal law. "Account was taken not only of the different laws then in force in Germany, including the French law in force in the Rhineland, but also of Dutch, Swiss, and Austrian law."[170]

Professor Peter De Cruz identifies two distinct roots of modern comparative law, to wit: legislative comparative law, and scholarly comparative law. The former refers to the process whereby foreign laws are invoked in order to draft new national laws. The most outstanding example of legislative comparative law is the German Civil Code (BGB) which unified the private law of Germany from 1st January 1900, and had the following as comparative materials that were consulted in order to produce it: the *Gemeines Recht*, Prussian Law, the French Civil Code, Austrian and Swiss Law. As to the latter, in the second half of the 19th century, comparative law appeared to have gained definite recognition as a branch of legal study, or at least as an approved method for the study of different legal systems.[171]

[169] Zweigert and Kötz (n 162) 15.
[170] Ibid, 16.
[171] Cruz (n 163) 15.

In recent times, there has been increased debate about the methods and theories of comparative law; no consensus has however emerged, and the discussion has not yet exercised substantial influence on practical legal comparison. Beyond mere doctrinal comparison, there are fundamentally two different methods, to wit: functional comparison and cultural legal comparison. Functional comparison, popularised primarily by Konrad Zweigert and Hein Kötz, starts from the premise that the function of law lies in responding to social problems and that all societies face in essence, the same problems. This makes for the possibility of comparing legal institutions even if they display different doctrinal structures, as long as they fulfil the same function for in this regard, they are functionally equivalent. Cultural comparison on the other hand (also called comparative legal studies or comparative legal cultures) rejects the reduction of law to its function and instead understands national law as an expression and development of the general culture of a society. These discrepancies in methods notwithstanding, the functional equivalence enables functional comparison to grasp simultaneously, the similarities in the solutions and the differences in the ways of reaching these solutions. Indeed, the idea of comparing legal systems and their peculiarities rests on the foundation or platform of functionality− whether the practice or style will function properly in the adopting jurisdiction.

Zweigert and Kötz emphasise that "every investigation in comparative law begins with the posing of a question or the setting of a working hypothesis− in brief, an idea." Their view appears to be that the usual reasons for embarking on such a study frequently stem from dissatisfaction with the solution to one's own system or purely from the intellectual pleasure of doing so. Nevertheless, they believe that: "the basic methodological principle of all comparative law is that of *functionality*. From this basic principle stem all the other rules which determine the choice of laws to compare, the scope of the undertaking, the creation of a system of comparative law… in law, the only things which are comparable are those which fulfil the same function." The authors go on to suggest that the question to which any comparative study must be directed must be posed in purely functional terms. "The question that must be asked must, therefore, be: what function

does the rule under scrutiny fulfil in its own society? Alternatively, which institution, legal or otherwise, fulfils the function under scrutiny in this particular society? Comparatists can then compare how institutions having the same role in different legal systems fulfil the same particular function." Thus, functionalist analysis involves two preliminary steps: problem definition and solution identification. This is in line with cultural equivalence and the need to ascertain the functional equivalents of a familiar legal term, institution or principle.

The authors also argue that "functionality rests on what every comparatist learns… that the legal system of every society faces essentially the same problems, and solves these problems by quite different means, though very often with similar results." This common function furnishes the required *tertium comparationis*[172] that renders comparison possible. Functional comparison does not proceed from a legal term or norm to a social fact, but from a social fact to the legal regulation thereof. "One does not compare abstract or general legal notions but, rather, how the legal systems under consideration deal with the same factual situations in real life." In other words, a prerequisite of functional legal comparison is the comparability of basic social conditions and social problems, which similarity creates the possibility of concluding that the respective legal solutions found in different legal systems are comparable. According to Rheinstein, the principle of functionality requires comparative inquiries to "go beyond the taxonomic description or technical application of one or more systems of positive law.... a very rule and institution has to justify its existence under two inquiries: First, what function does it serve in present society? Second, does it serve this function well or would another rule serve it better?"[173] For Kamba, a key question for the

[172] "*Tertium comparationis* (Latin for "the third part of the comparison") is the quality that two things which are being compared have in common. It is the point of comparison which prompted the author of the comparison in question to liken someone or something to someone or something else in the first place." Uwe Kischel, 'Tertium comparationis' in Jan M Smits, Jaakko Husa, Catherine Valcke & Madalena Narciso (eds), *Elgar Encyclopedia of Comparative Law* (vol 1, Edward Elgar Publishing, 2023) 484.
[173] Max Rheinstein, 'Teaching Comparative Law.' *The University of Chicago Law Review* [1938] (5) (4) 617-618.

comparatist is: "what legal norms, concepts or institutions in one system perform the equivalent functions performed by certain legal norms, concepts or institutions of another system?"[174]

In their book, Zweigert and Kötz note that comparative law has been proving extremely useful in the countries of Central and Eastern Europe where legislators face the need to reconstruct their legal systems after the collapse of the Soviet system. "The experience of other European countries helps them choose the solution which best suits their own legal traditions. Even outside Europe, States which used to be 'Soviet republics' are finding that foreign laws can be of assistance in framing domestic legislation, as have the Republic of China and many of the developing nations in Africa." They however counsel that one must proceed with intelligence and caution: "If comparative analysis suggests the adoption of a particular solution to a problem arrived at in another system, one cannot reject the proposal simply because the solution is foreign and *ipso facto* unacceptable." To quell objections to the "foreignness" of importations, Rudolph Jhering posited as follows: "The reception of foreign legal institutions is not a matter of nationality, but of usefulness and need. No one bothers to fetch a thing from afar when he has one as good or better at home, but only a fool would refuse quinine just because it didn't grow in his back garden." Thus, functional comparison may be defined as the study of legal means and methods for the resolution of similar or identical socio-legal problems adopted by different legal systems; the comparison serves both theoretical-scientific and applied-practical purposes, thus promoting a better understanding and assessment of legal institutions within one's own law.[175] "For the comparative process this implies that solutions found in different jurisdictions must be separated from their conceptual context and stripped of their national doctrinal overtones so that they may be seen purely in the light of their function, as an attempt to satisfy a particular legal need."

[174] WJ Kamba, 'Comparative Law: A Theoretical Framework.' *International & Comparative Law Quarterly* [1974] (23) (3) 517.
[175] Mousourakis (n 167) 32.

With respect to the relevance of the comparative law theory to this dissertation, the aim of the dissertation is to carry out a comparative analysis of PLS in the Parliament of the United Kingdom and the Congress of the United States. As earlier stated, the choice of both countries or legislatures for comparative analysis is based on the several relationships that both countries share with Nigeria, as well as their level and practice of PLS. While the practice of PLS is yet to have footing in Nigeria, the UK and US have adopted several mechanisms that have essentially entrenched it as part of legislative practice and procedure. The comparative analysis in the dissertation is done in a bid to extract valuable and practicable lessons that the Nigerian National Assembly can learn and adopt. By examining the practice of PLS in those countries, an analysis of the laws governing or regulating their legislative practice and procedure is done; thus, a comparative analysis of the legal basis of PLS is also done. Put succinctly, a comparative analysis of PLS will necessarily result in a comparative analysis of the laws establishing the legislative assemblies, the laws governing the exercise of legislative functions, and the laws regulating legislative practice and procedure.

CHAPTER THREE

POST-LEGISLATIVE SCRUTINY IN NIGERIA, THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

The previous chapter clarified PLS and other concepts relevant to the research, and also reviewed related literature and presented the theoretical framework for the research. This chapter

analyses PLS in Nigeria, the United Kingdom and the United States as carried out by their respective legislatures in order to unveil the approaches to PLS adopted by those legislatures.

3.1 Post-Legislative Scrutiny in Nigeria

The general perception has been that the concept of PLS is yet to be firmly rooted in Nigeria in view of the fact that there is no institutionalised systematic mechanism to evaluate the impacts of laws enacted by the legislature to determine their effectiveness.[176] Usually, amendment to legislation in Nigeria is prompted by public outcry, government policy directions, the media, and occasionally on the recommendation of the judiciary.[177] Although these are essentially PLS triggers, the actual assessment of post-implementation impacts of laws appears to be lacking in material particulars, while the exercise of legislative oversight has often been beset by constraints such as executive interference, internal conflicts, inexperience of legislators, high rate of turnover of legislators, and most of all, compromise by the legislature.[178] While there are some tools for post-legislative evaluation, these tools are ineffectively deployed, and mostly in select circumstances.

A primary tool that is a general legislative feature is the oversight mechanism. Oversight powers derive directly from the Constitution of the Federal Republic of Nigeria, 1999 (as altered) and the Standing Rules of the two chambers of the National Assembly (NASS) i.e. the Senate and the House of Representatives. While section 88 of the Nigerian Constitution grants the NASS power to conduct investigations, section 89 provides powers for matters of evidence. Section 88 specifically empowers each House of the NASS to direct investigation into: (a) any matter or thing with respect to which it has power to make laws; and (b) the conduct of affairs of any person, authority, Ministry or government department charged or intended to be charged with the duty of

[176] DC Ogbu, 'Post Legislative Scrutiny as a Mechanism for Effective Legislation.' *International Journal of Legislative Drafting and Law Reform* [2021] (10) (1) 17.
[177] Ibid.
[178] Fashagba (n 5) 440; Rick Stapenhurst, Kerry Jacobs & Oladeji Olaore, 'Legislative Oversight in Nigeria: An Empirical Review and Assessment.' *The Journal of Legislative Studies* [2016] (22) (1) 2.

or responsibility for- (i) executing or administering laws enacted by the National Assembly, and (ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly. These powers are only exercisable for the purpose of enabling the NASS to make laws with respect to any matter within its legislative competence and correct any defects in existing laws, and to expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.[179] This has been affirmed in appellate decisions such as *House of Representatives & Ors* v *SPDC (Nig) & Anor*,[180] *NICON Insurance Ltd & Anor* v *Bureau of Public Enterprises & Anor*,[181] and *SPDC (Nig) Ltd* v *Speaker, House of Representatives & Anor*.[182] Apart from limiting the jurisdictional scope of the oversight powers of the NASS, the Nigerian Constitution essentially provides the primary framework or basis for PLS in Nigeria by stipulating (to slightly paraphrase the section) that the oversight powers of the NASS are exercisable for the purpose of correcting defects in laws, and exposing inefficiency in the execution or administration of laws within its legislative competence. The second aspect of the paraphrased provision aptly aligns with some of the goals of PLS.

Oversight is primarily exercised through the committee system in Nigeria's legislature. The Senate and the House of Representatives each have well over fifty committees that are assigned different areas of jurisdiction. In general terms, the areas of oversight assigned to the various committees are mainly in respect of the subject matters of the respective committees, and annual budget estimates.[183] There is, with the exception of a few committees,[184] no express inclusion of

[179] Section 88(2) of the Nigerian Constitution.
[180] [2010] LPELR-5016(CA).
[181] [2020] LPELR-51574(CA).
[182] [2023] LPELR-59844(CA).
[183] See for instance, Order 18 Rules 5 and 10 of the Standing Orders of the Nigerian House of Representatives, Ninth Edition, 2016. Rules 5 and 10 of the said Order respectively provide for the Committee on Public Petitions (with oversight over *inter alia* the Public Complaints Commission and annual budget estimates), and the Committee on Agricultural Colleges and Institutions (with oversight over *inter alia*, the Federal Ministry of Agriculture, Agricultural College and Institutions, and annual budget estimates).
[184] See for instance, Rule 98(15)(20)(24)(26) and (41) of the Nigerian Senate Standing Orders 2015 as amended, and Order 18 Rules 15(4), 15(6), 22(2), 27(2), 31, 36, 39, 40, 41, 43, 51, 54, 64, 67, 73 and 82 of the Standing Orders of the Nigerian House of Representatives.

oversight over the implementation, enforcement, review or performance of enacted laws and evaluation of impacts.

An oversight feature that acts as a tool of PLS is the Medium-Term Expenditure Framework (MTEF). MTEF constitutes an approach to budgeting and public financial management that addresses well-known shortcomings of annual budgeting, including short-sightedness, conservatism and parochialism.[185] It allows the level and composition of public expenditure to be determined in light of emerging needs and available resource envelope.[186] MTEF serves as the foundation for the annual budget preparation in Nigeria, by outlining the government's revenue and expenditure projections over the medium-term, helping to guide the formulation of the federal budget.[187] Section 11 of the Fiscal Responsibility Act 2007 requires the Federal Government, after consultation with the States, to prepare (four months before the commencement of the next financial year) an MTEF for the next three financial years, which shall contain a macro-economic framework setting out macro-economic projections; a Fiscal Strategy Paper (FSP); an expenditure and revenue framework; a consolidated debt statement; and a statement describing the nature and fiscal significance of contingent liabilities and quasi-fiscal activities and measures to offset the crystallisation of such liabilities. After the Federal Government prepares an MTEF and same is approved by the Federal Executive Council, the Act requires that it should be laid before the NASS for approval (by resolution of both Houses) and published in a Gazette.[188] MTEF is created before the annual budget, and in fact, the budget is derived from it.

The MTEF acts as a PLS tool in view of the following facts: (a) an MTEF is prepared four months before the operation of a new budget; (b) apart from providing future projections, an MTEF is required to contain details of the performance of the extant budget (as such, four months to the

[185] A Wildavsky, *Budgeting: A Comparative Theory of Budgeting Processes*. (Transaction Books, 1986).
[186] A Nurudeen and A Usman, 'Government Expenditure and Economic Growth in Nigeria, 1970-2008: A Disaggregated Analysis.' *Business and Economics Journal* [2010] (26).
[187] Joy Erunane, 'MTEF: What it means and why it matters.' *Order Paper* (Abuja, 24 October 2023) <https://orderpaper.ng/2023/10/24/mtef-what-it-means-and-why-it-matters/> accessed 15 December 2023.
[188] Sections 11 and 15 of the Act.

end of the term of the extant budget, an assessment of its performance so far is made); (c) the NASS is statutorily required to properly review/scrutinise the MTEF and can make changes, if necessary, before approving it; (d) budgets in Nigeria are enacted as Appropriation Acts; (e) through the preparation of an MTEF by the Federal Government and the review of same by the NASS, the extant Appropriation Act is reviewed to assess its actual performance, with a view to ascertaining how well the budget has been implemented, and it is on this basis that future projections are made (previous Appropriation Acts are also reviewed); (e) that review of the Appropriation Act is in fact, PLS, as it is done with a view to ascertaining how the budget/Act has been implemented, and whether the statutory objectives have been achieved; in effect, it monitors the performance of the budget. As an example, in the 2021 Report of the Senate Joint Committee on the 2022-2024 MTEF and FSP, the Committee on Finance noted *inter alia* that:

> …in its determination to arrive at a realistic MTEF and FSP for the next three (3) years, the Joint Committee considered the actual performance of the 2019-2021 Budgets of the invited MDAs and the previous MTEF/FSP, the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Fiscal Responsibility Act (FRA), 2007 and several other relevant documents, including the specific Establishment Acts….[189]

The MTEF is thus an essential tool of both legislative oversight and PLS.

Apart from the oversight feature, there are subtle forms of PLS mechanisms in Nigeria. These are mainly the insertion of sunset clauses, the insertion of provisions that establish structures or institutions that will ensure the implementation of legislation, and submission of reports to the legislature by executive officials. It is however noteworthy that these mechanisms are present in very few legislation, thus stultifying effective monitoring and evaluation of the implementation of legislation and the impacts thereof. Put differently, these mechanisms are not regular features of Nigerian legislation. The Administration of Criminal Justice Act, 2015 (ACJA) is perhaps the only federal legislation that establishes a distinct structure for ensuring the implementation of the Act.

[189] Senate Committee on Finance, 'Report of the Senate Joint Committee on the 2022 – 2024 Medium Term Expenditure Framework (MTEF) and Fiscal Strategy Paper (FSP).' Senate of the Federal Republic of Nigeria, September 2021, 3.

Section 469 of the Act establishes the Administration of Criminal Justice Monitoring Committee (ACJMC) that is *charged with the responsibility of ensuring the effective and efficient application of the Act by relevant agencies*. Additionally, the ACJMC has right of access to all the records of the organs in the administration of justice sector to which the Act applies. It is also required to publish annually, a report of its activities.

In respect of the submission of reports to the legislature by executive officials, few Acts have such provisions. Three of the few Acts that have such provisions are the Federal Competition and Consumer Protection Act, 2018 (FCCPA), the Nigeria Extractive Industries Transparency Initiative Act, 2007 (NEITIA), and the Fiscal Responsibility Act, 2007 (FRA). Section 25(3) of the FCCPA requires the Commission established by the Act (the Federal Competition and Consumer Protection Commission) to prepare and submit to the President of Nigeria through the Minister of Industry, Trade and Investment, and to the NASS, a report on the activities of the Commission during the immediate preceding year which includes a copy of the audited accounts and auditors' report on the accounts for that year. The report is to be submitted on or before 30th June in each year. In addition, the Act empowers the Commission to advise the Federal Government on any matter relating to the operation of the Act, including making recommendations for the review of policies, legislation and subsidiary legislation for the eradication of anti-consumer protection and anti-competitive behaviour.[190] As well, the Commission is empowered to liaise with or assist any association or body of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of the Act.[191]

As regards NEITIA, the Act requires the Nigeria Extractive Industries Transparency Initiative (NEITI) established by the Act to appoint independent auditors in each financial year to audit the total revenue that accrued to the Federal Government for that year from extractive industry

[190] Section 17(f) of the Act.
[191] Section 18(g) of the Act.

companies, in order to determine the accuracy of payments and receipts.[192] The Act further requires NEITI to: (a) submit audit reports received from the independent auditors to the NASS and Auditor-General of the Federation; (b) publish those reports; and (c) submit a bi-annual report of its activities to the President of Nigeria and the NASS. The Auditor-General of the Federation is required to publish comments made or actions taken by the Government on the audit reports not later than three months after the reports are submitted to the NASS. Restrictions are placed on the re-appointment of auditors or auditing firms. The Act establishes the National Stakeholders Working Group (NSWG) that serves as the governing body of the NEITI. The NSWG is responsible for formulating policies, programmes and strategies for the effective implementation of the objectives of NEITI. It is empowered to ensure the periodic review of programmes performance by NEITI. On its part, NEITI is also required to submit a report of its activities during the immediate preceding year to the President of Nigeria and the NASS not later than 30th September in each year. Its audited accounts and the auditor's report in that regard are to be included in its report.

Apart from placing effectively, the implementation of the FRA in the hands of the Fiscal Responsibility Commission (FRC), the FRA requires the FRC to submit a report of its activities (including cases of contravention investigated) during the preceding year to the NASS not later than 30th June in each financial year.[193] A copy of its audited accounts for that preceding year is to be included in the report. By section 30 of the Act, the Minister of Finance is empowered to monitor and evaluate, through the Budget Office of the Federation, the implementation of the Annual Budget, and also assess the attainment of fiscal targets, with quarterly reports to the Fiscal Responsibility Council and the Joint Finance Committee of the NASS. The reports are to be published in the mass and electronic media and on the website of the Ministry of Finance not later than thirty-days after the end of each quarter. In addition, the Act mandates the Federal

[192] Section 4 of the Act.
[193] Section 10 of the Act.

Government, through its Budget Office, to publish a summarised report on budget execution in a form prescribed by the FRC, within thirty days after the end of each quarter. It further requires the Minister of Finance to publish (for submission to the NASS and dissemination to the public), a consolidated budget execution report showing implementation against physical and financial performance targets.

Regarding sunset clauses, there is a near absence of them in Nigerian legislation. This is because Nigerian laws are generally enacted to exist in perpetuity until they are amended or repealed. Sunset clauses (which are clauses that stipulate the expiration of legislation) are essentially only present in Appropriation Acts. It is evident that the insertion of sunset clauses in Appropriation Acts is purely as a result of definite constitutional requirements. Section 81 of the Nigerian Constitution provides that "the President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year, estimates of the revenues and expenditure of the Federation for the next following financial year." The heads of expenditure are to be included in an Appropriation Bill (known as Appropriation Act when passed). "Financial year" is defined by section 318 of the Constitution to mean any period of twelve months beginning on the first day of January in any year or such other date as the National Assembly may prescribe. In compliance with sections 80 and 318 of the Constitution, each Appropriation Act contains a sunset clause with the marginal note "*Expiry*". An example is the Appropriation Act, 2022 which provided the following in its section 13: "In line with the provisions of section 318 of the Constitution of the Federal Republic of Nigeria, this Act expires after 12 months, starting from 1st day of January to 31st day of December, 2022 when assented to."

From the analysis above, it is evident that for the proper entrenchment of PLS as part of Nigeria's legislative practice and procedure, a lot still needs to be done. While there are some visible elements of PLS in legislation, those elements are found in an infinitesimal number out of the deluge of legislation in Nigeria. The picture however appears to be on course for change. At the 2022 conference organised by the Westminster Foundation for Democracy (WFD) in

partnership with the National Institute for Legislative and Democratic Studies (NILDS) and the National Assembly, participants shared knowledge on PLS and its potential implementation in Nigeria whilst reflecting on the theme "Strengthening the Impact of Laws in Nigeria through Post-Legislative Scrutiny." At the conclusion of the conference, a position paper with recommendations for introducing and deepening PLS in the legislative process of Nigeria was presented. The recommendations were: (a) the committee approach should be adopted; (b) Senate/House Committees on Legislative Compliance should serve as Pilot Committees; (c) the National Assembly should champion the institutionalisation of PLS; and (d) PLS should be included on the agenda for inaugurating elected legislators.

3.2 Post-Legislative Scrutiny in the United Kingdom

In the United Kingdom, the UK Government attaches importance to improving parliamentary processes and in this wise, it has introduced several reforms. One of such is the adoption of PLS by the Government, and its encouragement of the practice in Parliament. As such, PLS in the United Kingdom actively involves the Government and the Parliament; there is the combination, in a complementary fashion, of internal scrutiny of government departments, and parliamentary scrutiny.

PLS was introduced in response to advocacy for improved legislation as the view was that once an Act received Royal Assent, insufficient attention was paid to its actual implementation and impact. The PLS process in the UK usually commences with a post-implementation review impact assessment process by a government department. Through this process, a review is carried out usually to satisfy a statutory review obligation, for instance, as may be required under the Government's Sunsetting Regulations: Guidance.[194] The relevant government department is then

[194] The HM Government Sunsetting Regulations: Guidance (March 2011) was prepared by the Better Regulation Executive (BRE) to assist departments in implementing the Government's commitment to sunset regulations. It sets out the objectives for the policy, the standards that will be applied across the Government, what departments will have to do differently, and how the system will work with existing requirements such as post-implementation review, and

required, within a period of three to five years after an Act has received Royal Assent, to submit to the relevant House of Commons departmental select committee, a memorandum reporting on certain key elements of the Act's implementation and operation, with copies sent to key stakeholders. The objective is to ensure that in appropriate cases, the relevant select committee, facilitated by information provided by the department on the basis of an initial assessment of the Act, can give systematic consideration as to whether it would be appropriate for a fuller review to be carried out.[195] The relevant government department in each case is the department responsible for the Act at the time a memorandum is to be submitted or discussed with the relevant committee, irrespective of whether it was the responsible department at the time the Act was passed, while the relevant committee will be the department's normal departmental select committee.[196]

In each session since 2012, there has been a Lords Special Inquiry Committee (previously called an *ad hoc* committee) appointed to carry out PLS on specific Acts.[197] The Lords Liaison Committee selects the Act (or Acts) to be scrutinised on an *ad hoc* basis, and in due course a select committee is established. The process applies to most government bills that reach Royal Assent as well as to private members' bills that receive Royal Assent since such Acts form part of the body of primary legislation for which departments are responsible.[198] Although the submission of a memorandum is essentially a general requirement, there are exceptions. For the following Acts, there is no need to submit any memoranda: (a) Consolidated fund and appropriation Acts; (b) Finance Acts; (c) Tax law rewrite Acts; (d) Consolidation Acts; (e) Statute law repeal Acts; (f) Private Acts; and (g) Armed forces Acts.[199] Notwithstanding the non-exhaustive exceptions, there may be instances where relevant departments and committees will agree that there is no need for the submission of memorandum, and such instances include where: (a) an Act has already been

post-legislative scrutiny. See HM Government, *Sunsetting Regulations: Guidance*. (Department for Business, Innovation and Skills, 2011) 5.
[195] Cabinet Office, *Guide to Making Legislation*. (Cabinet Office, 2022) 286.
[196] Ibid, 287.
[197] Ibid, 288.
[198] Ibid.
[199] Ibid, 287.

repealed (without having been consolidated); (b) an Act has only a very limited policy or practical significance; (c) a review has already been committed to or carried out; or (d) a department has already submitted relevant evidence in connection with another inquiry by the parliamentary committee.[200] Where the relevant Commons departmental select committee agrees that a memorandum is not required, other parliamentary committees (in the Commons or Lords) with legitimate interests are not precluded from requesting a memorandum from the department under their existing powers.[201] Although the usual period within which to submit a memorandum is three to five years from the date of Royal Assent, a department may consider it most appropriate in the following instances, to submit a memorandum outside the usual timeline: (a) where the principal provisions of the Act were not brought into force until sometime after Royal Assent (a delay in bringing the Act into force may itself be a matter of key interest for PLS); or (b) where some outside event (whether envisaged in the Act itself or unforeseen) or ongoing scrutiny means that a different timescale is appropriate.[202]

While a memorandum may not constitute a full PLS of an Act, it must be detailed enough to enable the relevant select committee (or other parliamentary bodies) to decide whether a much fuller PLS would be appropriate. The basic contents of a memorandum are: (a) summary of the objectives of the Act; (b) implementation– factual information on when and how different provisions of the Act have been brought into force, with details on provisions that have not entered into force (with reasons stated) and enabling powers that have not been used; (c) secondary legislation– a summary of secondary legislation and other documents issued pursuant to the Act; (d) legal issues– summary of legal (or drafting) issues that have arisen publicly in courts (as subject of litigation) or elsewhere, with indication of responses to those issues; (e) other reviews– summary of any other assessment or review (governmental, parliamentary, academic and others)

[200] Ibid.
[201] Ibid, 288.
[202] Ibid.

of the Act of which the department is aware; and (f) preliminary assessment of the Act– described as the core of the memorandum, it is a short preliminary assessment of how the Act has worked in practice, relative to objectives and benchmarks, and drawing on data and evidence to show implementation in practice, and identifying stakeholders impacted by the Act's provisions.[203] These details are perceived as being capable of providing essentially sufficient information that would enable post-legislative reviewing bodies to make effective assessments as to how an Act is working in practice.

The memorandum is to be published as a command paper[204] to make clear the significance of the PLS process, show that it is being published as part of the PLS process, and to make the contents of the memorandum readily available to all interested parties and not just the committee to which it is submitted.[205] Copies of the memorandum are to be submitted by relevant departments to the following offices and persons six working days before formal publication (or nine days in the case of recess): (a) the relevant Commons select committee; (b) the Private Offices of the Leader of the House of Commons, Leader of the House of Lords, Chief Whip (Commons) and Chief Whip (Lords); (c) Parliamentary Business and Legislation (PBL) Secretariat; (d) Cabinet Office Parliamentary Adviser; (e) Office of the Parliamentary Counsel; (f) Private secretary in the Prime Minister's Office responsible for the legislation; (g) Cabinet Secretariat desk officer responsible for the legislation; and (h) Lords Liaison Committee.[206] Following the consideration of the memorandum, the Commons departmental select committee may decide that a fuller PLS of the Act is appropriate, and in such a case, its inquiry would be carried out in the same fashion

[203] Ibid, 289-290.
[204] "Command papers are Government publications that are presented to Parliament, usually published in a numbered series. They convey information or decisions that the government thinks should be drawn to the attention of one or both Houses of Parliament, and include State Papers, White Papers, Green Papers, some government responses to Select Committee reports, Reports of Royal Commissions and some other Committees of Inquiry, and Statistics and annual reports of some government bodies. The term 'Command' is in the formula carried on the papers: "Presented to Parliament by the Secretary of State for …by Command of His Majesty."" UK Parliament, 'About Command Papers.' *UK Parliament* (London, n.d.) <https://www.parliament.uk/about/how/publications/government> accessed 28 November 2023.
[205] Cabinet Office, *Guide to Making Legislation*. (Cabinet Office, 2022) 291.
[206] Ibid, 292.

as any other select committee inquiry.[207] Where the committee does not instigate a fuller inquiry, the memorandum might be taken up by another interested parliamentary committee, of either House. The Lords Liaison Committee may also select Acts on an ad hoc basis for PLS.[208]

To further explicate the PLS process in the UK Parliament, it may be apposite to reiterate some fundamentals. In the UK Parliament, PLS is carried out by both the House of Lords and House of Commons. PLS is a fully institutionalised practice in the UK, as evinced by the systematic approach adopted by the executive and legislative branches. Since 2008, government departments have been required to prepare and publish memoranda which assess whether an Act of Parliament has met its key objectives, within three to five years of Royal Assent, which memoranda are presented to departmental select committees for additional scrutiny.[209] In Parliament, PLS is carried out by departmental select committees in the House of Commons and *ad hoc* committees in the House of Lords. Departmental select committees (sessional committees that shadow government departments) were created in the 1970s and are regarded as the main vehicle for promoting scrutiny and accountability in the House of Commons. The committees are sessional (formed for a full parliamentary term which can be up to five years) and they undertake a range of core tasks including PLS. They were created with a view to carrying out detailed scrutiny and holding the executive branch accountable for its actions and inactions. Given their apolitical approach and focus on individual members of parliament, the committees set their individual agendas and produce reports that traverse party lines, with no allegiance to any political party.[210] In the House of Lords, PLS is undertaken by select/*ad hoc* committees that have a broad scope and do not shadow government departments (unlike the departmental select committees in the House of Commons). The creation of *ad hoc* committees is determined by the House of Lords Liaison Committee (which oversees the committee system in the House of Lords). *Ad hoc*

[207] Ibid, 293.
[208] Ibid.
[209] Tom Caygill, 'A Tale of Two Houses? Post-Legislative Scrutiny in the UK Parliament.' *European Journal of Law Reform* [2019] (21) (2) 88.
[210] Ibid, 89.

committees are set up temporarily and disbanded after the publication of their reports, differing from sessional committees such as departmental select committees in the House of Commons.[211]

Differences exist in respect of the manner in which both Houses of the UK Parliament select legislation for PLS. While *ad hoc* committees in the House of Lords are set up for a specific purpose (which might be to undertake PLS), the departmental select committees in the House of Commons have PLS as one of their core tasks, thus making them independent and free to determine when to carry out PLS. Caygill asserts that in the House of Commons, there are a number of reasons why a committee may decide to undertake PLS and select the legislation that it does.[212] He notes that the Culture, Media and Sport Committee's inquiry into the Gambling Act 2005 was selected on the basis that they had received "a large number of representations from the gambling industry," with the industry being concerned that legitimate commercial interests were being interfered with and that the Act was difficult to interpret because it was overly complex; he refers to a remark by Philip Davies MP, a member of the committee, who noted that "it is common for organisations to approach committees with their concerns and problems."[213]

Caygill also notes that in terms of the Justice Committee's inquiry into the Freedom of Information Act 2000, it was selected because the Committee had received the memorandum from the Ministry of Justice following its departmental post-legislative review (even though government-produced memoranda do often act as a trigger for PLS).[214] To him, the issue was also salient at that particular moment as "the government was proposing to make changes to the Act in terms of narrowing the scope and restricting the use of it," and so "the fact that the government wanted to make changes made it more urgent to get the report out as quickly as possible" as the committee wanted to share its assessment of the challenges before the government made a decision.[215] It is further noted by Caygill that the Liaison Committee in the House of Lords is more

[211] Ibid, 90.
[212] Ibid.
[213] Ibid, 91.
[214] Ibid.
[215] Ibid.

proactive when it comes to PLS than its House of Commons equivalent, as it formally recommends which committees are set up and what topics are examined.[216] As such, the *ad hoc* committees themselves are set up to undertake scrutiny of a particular Act and have no choice over the matter once it has been created. There are key factors that the House of Lords Liaison Committee takes into consideration, to wit: (a) whether the inquiry would make the best use of the expertise of Members of the House of Lords; (b) whether the legislation or topic has been or is likely to be considered by a Commons Committee; (c) timing; (d) the Act should be a major one that has reformed the law in a fairly substantial way; (e) avoidance of anything too politically controversial; and (f) avoidance of legislation that is about to be substantially amended.

As to the first consideration, Caygill notes that one of the unique characteristics of the second chamber is that it contains many people with expertise in different sectors, so when undertaking PLS, it is important to tap into that expertise as well. He also notes that the second consideration is important because while resources are stretched, it is important to ensure that there is as little overlap as possible between the two Houses; if committees were assessing the same issue, then it would be a waste of resources but it would also raise the question of what else committees might be foregoing. As to the third consideration, Caygill notes that timing is also an important factor in the sense of whether it is the right time to review the legislation. While there may appear to be abundant time for PLS, the timeframe suggested by the Cabinet Office guidelines with the publication of post-legislative memoranda is limited (3 to 5 years). On the fourth and fifth considerations, Caygill asserts that they are important because the focus of PLS is more on the Act itself rather than looking at the underlying politics of the policy. On the sixth consideration, Caygill also asserts that it is important because there would not be much point in conducting a full review in that regard.[217]

[216] Ibid, 92.
[217] Tom Caygill, 'A Tale of Two Houses? Post-Legislative Scrutiny in the UK Parliament.' *European Journal of Law Reform* [2019] (21) (2) 93-94.

In analysing the differences in the outputs of PLS in both Houses of the UK Parliament, Caygill states that in terms of the breakdown of PLS, the House of Commons has undertaken 12 inquiries and the House of Lords six, and that on average, committees in the House of Commons produce 19 recommendations per report compared with 41 recommendations per report made by Lords committees.[218] He notes that unlike departmental select committees which have a wide range of tasks, *ad hoc* committees have (usually) only one task they were set up to undertake; hence, they are able to dedicate a full session to the inquiry and produce more detailed scrutiny. He also notes that the *ad hoc* committees of the House of Lords make proportionally more recommendations calling for action in relation to legislation, and also produce more recommendations relating to policy and practice, attributing these to the fact that the House of Lords often takes a more technical approach to scrutiny, as it does with the full line-by-line scrutiny it undertakes during the formal legislative process.[219] Such technical scrutiny, he argues, mixed with the expertise and time *ad hoc* committees have to undertake their inquiries leads to more legislative recommendations. In conclusion, Caygill holds the view that in the House of Commons, there is a focus on representations from outside organisations, the production of memoranda and the salience of issues. In the House of Lords, he notes that the focus is on its subservient role in the UK Parliament.[220] Finally, he notes that each House operates its own slightly different system of PLS with limited cooperation, and indicates that this has implications for other bicameral legislatures, especially those yet to introduce PLS formally, in that they need to determine whether to introduce a joined-up system of scrutiny or to have a separate system in each chamber.

In addition to the above processes, there is also the utilisation of the tool of oversight or scrutiny of government. Scrutiny of government is undertaken by both Houses of Parliament and may be exercised through three avenues, to wit: (a) parliamentary questions; (b) evidence to

[218] Ibid, 94.
[219] Ibid, 95.
[220] Ibid, 95-99.

committees; and (c) statements to parliament. In respect of parliamentary questions, Members of both Houses can table questions (for oral or written answers) to ministers and in response, ministers are obliged to explain and account for the work, policy decisions and actions of their departments.[221] Questions for oral answer in the House of Commons are tabled for answer by specific departments on specified days, according to a rota determined by the Government and in the House of Lords, up to four questions for oral answer may be taken each day which may relate to the work of any department.[222] Questions may be tabled for written answers to any department in either House on any sitting day. A written answer is sent to the Member tabling the question and is published in the Official Report of the relevant House. Additionally, the Speaker of either House may also allow for any urgent questions to be made at his or her discretion.[223]

In respect of evidence to committees, each House appoints select committees to scrutinise the work of government and hold it to account.[224] In the House of Commons, a public bill committee may also take written and oral evidence on the bill that is before it. Ministers and civil servants usually appear before these committees to give evidence when they are invited to do so and supply written evidence when it is requested.[225] In respect of statements to parliament, when Parliament is in session, announcements of government policies may be made to Parliament. Ministers may, subject to the relevant collective clearance being received, make statements to Parliament both orally and in writing on the work of their department; the Government (and not the House of Commons or the House of Lords) decides whether or not a statement is made.[226]

A subtle form of fostering the aims of PLS by way of statutory instrument may be found in the Legislative and Regulatory Reform Act 2006. It is an Act to *inter alia*, enable provision to be

[221] Cabinet Office, *The Cabinet Manual: A Guide to Laws, Conventions and Rules on the Operation of Government*. (1st edn, Cabinet Office, 2011) 41.
[222] Ibid.
[223] Ibid.
[224] Ibid.
[225] Ibid.
[226] Ibid, 41.

made for the purpose of removing or reducing burdens resulting from legislation[227] and promoting regulatory principles. By section 1 of the Act, a Minister of the Crown may by order under the section make any provisions for the purpose of removing or reducing any burden,[228] or the overall burdens, resulting directly or indirectly for any person from any legislation.[229] The provision that may be made includes: (a) provision abolishing, conferring or transferring, or providing for the delegation of, functions of any description, and (b) provision creating or abolishing a body or office, and provision made by amending or repealing any enactment.

By section 3 of the Act, a Minister may not make provision under section 1(1) or 2(1) of the Act, other than provision which merely restates an enactment, unless he considers that the following conditions, where relevant, are satisfied in relation to that provision: (a) the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means; (b) the effect of the provision is proportionate to the policy objective; (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it; (d) the provision does not remove any necessary protection; (e) the provision does not prevent any person from continuing to exercise any right or freedom

[227] "Legislation" means *inter alia*, a public general Act or local Act. Section 1(6) of the Act refers.

[228] In the section, "burden" means any of the following: (a) a financial cost; (b) an administrative inconvenience; (c) an obstacle to efficiency, productivity or profitability; or (d) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity. The burden must however not be one that affects only a Minister of the Crown or government department, unless it affects the Minister or department in the exercise of a regulatory function. Financial cost or administrative inconvenience may result from the form of any legislation, for example, where the legislation is hard to understand. Section 1(3)(4)(5) of the Act refers.

[229] There are exceptions to making orders in this regard. An order in this regard may not make provision amending or repealing any provision of the Human Rights Act 1998, and Part I of the Legislative and Regulatory Reform Act. Also, an order in this regard may not, except by virtue of section 1(8) or 2(7) of the Act, make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament. As well, an order in this regard may not, except by virtue of section 1(8) or 2(7) of the Act, make provision to amend or repeal any Northern Ireland legislation. Except with the agreement of the National Assembly for Wales, an order in this regard may not make provision which would be within the legislative competence of the Assembly if the provision were contained in: (a) an Assembly Measure (until the Assembly Act provisions of the Government of Wales Act 2006 come into force), or (b) an Act of the Assembly (after those provisions come into force). An order in this regard may also not make any provision: (a) conferring a function on the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government; (b) modifying or removing a function of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government; (c) restating any provision which confers a function on the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government; or (d) that could be made by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government in the exercise of any of their functions, except with the agreement of the Welsh Ministers. Sections 8 to 11 of the Act refer.

which that person might reasonably expect to continue to exercise; and (f) the provision is not of constitutional significance. A Minister may not make provision under section 1(1) or 2(1) which merely restates[230] an enactment unless he considers that the provision made would make the law more accessible or more easily understood.

3.3 Post-Legislative Scrutiny in the United States of America

PLS in the United States of America essentially takes the form of congressional oversight. While there is, strictly speaking, no specially defined framework that goes by the name or description of "PLS", there are very potent structures and mechanisms for monitoring and evaluating the implementation of laws and assessing their impacts. These structures and mechanisms are very similar to, and in some cases, even more advanced than the usual PLS mechanisms. In the final analysis, they align with those put forward by PLS. Admixtures of processes and mechanisms feature prominently.

The United States Administration is overseen internally and externally. Internally, each government department and most agencies have an internal review mechanism– an Office of the Inspector General[231] that is charged with the function of identifying, auditing, and investigating fraud, waste, abuse, embezzlement and mismanagement of any kind within the executive department. In respect of external oversight, Congress has several non-partisan agencies at its disposal such as the Government Accountability Office (GAO) (which audits the government), the Congressional Budget Office (CBO), and the Congressional Research Service (CRS).[232]

[230] In the section, to "restate" an enactment means to replace it with alterations only of form or arrangement (and for these purposes to remove an ambiguity is to make an alteration other than one of form or arrangement). Section 3(5) of the Act refers.

[231] C Klugman, 'Congressional Oversight of the US Administration: Tools and Agencies.' *European Parliamentary Research Service* [2016] Briefing, November, 1, 3. For instance, the United States House of Representatives has, as established by its Rules, the Office of the Inspector General for the House of Representatives, which is empowered to provide *inter alia*, audit, investigative and advisory services to the House and joint entities in a manner consistent with government-wide standards. See Rule II (6) of the Rules of the United States House of Representatives, 118th Congress, January 10, 2023. See also Inspector General Act of 1978.

[232] CM Davis, T Garvey & B Wilhelm, 'Congressional Oversight Manual.' *Congressional Research Service* [2021] CRS Report, March 31, 10.

Regulatory Impact Analysis is the instrument that government Departments and Agencies use (by themselves, in part, under scrutiny of the Office of Information and Regulatory Affairs– a branch of the White House) for ex-ante assessment of the major potential effects of regulation.[233] Ex-post analysis is carried out through retrospective reviews that can be mandated by Congress if the original legislation demands that the executive branch provides regular reports. If Congress deems a rule (regulation) dissatisfactory, it can repeal it, change the underlying legislation or use its power of the purse to withhold funding.[234]

Although Congress usually exercises its power of oversight through the committee system, congressional oversight may take different forms and may be executed through a range of techniques. These may include authorisation, appropriations, hearings by standing committees, specialised investigations by select committees, and reviews and studies by congressional support agencies and staff.[235] While there is no express provision on congressional oversight in the U.S. Constitution, the Constitution vests all legislative powers in Congress and this has been interpreted by the United States Supreme Court to mean the vesting also of implicit authority in Congress to gather information in aid of its legislative function– "We are of opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function."[236] The power of Congressional oversight and its relevance to law-making and appropriation has been emphasised by the United States Supreme Court. In *Watkins* v *United States*,[237] the Court held that: "the power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes." In *Barenblatt* v *United States*,[238] the Court held that: "the scope of the power of inquiry … is as penetrating and far-reaching as the potential power to

[233] Ibid.
[234] Ibid, 1, 8.
[235] LE Halchin and Frederick M Kaiser, 'Congressional Oversight.' *CRS Report for Congress* [2012] Congressional Report Service, 1.
[236] *McGrain* v *Daugherty* 273 U.S. 135, 174 [1927].
[237] 345 U.S. 178, 187–88 [1957].
[238] 360 U.S. 109, 111 [1959].

enact and appropriate under the Constitution" and in *Trump* v *Mazars USA, LLP*,[239] it was held that: "Without information, Congress would be shooting in the dark, unable to legislate wisely or effectively." In view of the fact that congressional oversight is regarded as part of lawmaking, congressional committees are required, in carrying out the oversight function, to observe applicable constitutional limitations and respect applicable rights.[240] Two limitations are that: (1) the oversight must be related to, and in furtherance of, a legitimate task of the Congress; it must serve a 'valid legislative purpose;'[241] and (2) the scope of the oversight is limited to subjects that can be legislated on, and so Congress "cannot inquire into matters which are within the exclusive province of one of the other branches of the Government."[242]

Congress is also empowered by legislation to carry out oversight functions through its committees. Examples of such legislation are: (a) the Legislative Reorganization Acts of 1946 and 1970 which empowered standing committees in the Senate and House of Representatives to carry out checks and balances on programmes and agencies within their jurisdiction, and review and study on a continuous basis, the application, administration and execution of laws within their jurisdiction; (b) the Congressional Budget Act of 1974 that empowers Congressional Committees to carry out evaluation programmes by themselves or through contractors; and (c) the Government Performance and Results Act 1993 which demands from the executive, consultation with Congress and submission of reports to same in respect of plans and achievements.

Also relevant are the House and Senate Rules that amongst others provides for "special oversight" or comprehensive policy oversight, respectively, for specified committees over matters that relate to their jurisdiction. In addition to committees with specific jurisdictions and accompanying oversight powers in respect of those specific matters, the Rules of the House of Representatives provide for the establishment of the Committee on Oversight and Accountability

[239] 140 S. Ct. 2019 [2020].
[240] *Watkins* (n 237) 197.
[241] Ibid, 187; *Quinn* v *United States*, 349 U.S. 155, 161 [1955].
[242] *McGrain* (n 236) 177; *Barenblatt* (n 238) 112.

which is one of the twenty standing committees of the House.[243] The committee has jurisdiction over *inter alia*: (a) the Federal Civil Service, including intergovernmental personnel; (b) Government management and accounting measures generally; and (c) the overall economy, efficiency, and management of government operations and activities. The Rules also provide for general oversight responsibilities for the various standing committees in order to assist the House in: (1) its analysis, appraisal and evaluation of: (a) the application, administration, execution, and effectiveness of Federal laws; and (b) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and (2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.[244]

In order to determine whether laws and programmes addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (except the Committee on Appropriations) is required to review and study on a continuing basis: (a) the application, administration, execution, and effectiveness of laws and programmes addressing subjects within its jurisdiction; (b) the organisation and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programmes addressing subjects within its jurisdiction; (c) conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and (d) future research and forecasting on subjects within its jurisdiction.[245] Additionally, the Rules provide for special oversight functions for the various standing committees. In this regard, the Committee on Oversight and Accountability is required to review and study on a continuing basis,

[243] Rule X, clause 1(n) of the Rules of the United States House of Representatives, 118th Congress, January 10, 2023.
[244] Rule X, clause 2(a) of the U.S. House Rules.
[245] Rule X, clause 2(b)(1) of the U.S. House Rules.

the operation of Government activities at all levels, including the Executive Office of the President, while other standing committees are required to review and study on a continuing basis, all laws, programmes and Government activities relating to their respective jurisdictions.[246]

In the Senate, the Standing Rules of the Senate provide for the Committee on Homeland Security and Government Affairs (formerly Committee on Governmental Affairs), a standing committee. By the provisions of the Senate Rules, all proposed legislation, messages, petitions, memorials and other matters relating to the Federal Civil Service, Government information, intergovernmental relations, and the organisation and reorganisation of the executive branch of the Government *inter alia* are to be referred to the Committee.[247] The committee has the duty of: (a) receiving and examining reports of the Comptroller General of the United States and submitting recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports; (b) studying the efficiency, economy, and effectiveness of all agencies and departments of the Government; (c) evaluating the effects of laws enacted to reorganise the legislative and executive branches of the Government; and (d) studying the intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organisations of which the United States is a member.[248] The jurisdiction of the Committee supersedes the jurisdiction of any other committee of the Senate.

Apart from working through the oversight function of committees directly, the United States essentially conducts PLS through other means such as appointing external bodies to carry out evaluation and report back to Congress, setting up monitoring frameworks in the body of legislation, and utilising review and sunset clauses. An admixture of these approaches can be found in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) passed in March 2020. In order to ensure that the reliefs provided by the Act actually impact the populace, and to also

[246] Rule X, clause 3 of the U.S. House Rules.
[247] Rule XXV(1)(k)(1) of the Standing Rules of the United States Senate (revised to January 24, 2013).
[248] Rule XXV(1)(k)(2) of the U.S. Senate Standing Rules.

ensure accountability, the Act sets up multiple oversight mechanisms for effective and efficient monitoring and evaluation of implementation and impacts. Included in the pack are three newly established oversight mechanisms, to wit: the Special Inspector General for Pandemic Recovery (SIGPR), the Pandemic Response Accountability Committee (PRAC), and the Congressional Oversight Commission (COC).

The SIGPR is charged with conducting, supervising, and coordinating audits and investigations into the "making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury" under the Act.[249] In accordance with the Inspector General Act of 1978, the SIGPR is empowered to undertake investigations without prior approval, issue subpoenas, make arrests, and seek arrest and search warrants without prior authorisation from the Attorney General.[250] It can also refer matters to the Department of Justice (DOJ) or other agencies for prosecution and must submit quarterly reports to Congress, and report to Congress any instance when information it seeks has been unreasonably withheld. As provided under the Act, the SIGPR shall terminate on the date five (5) years after the enactment of the Act.[251]

PRAC has oversight of all funds appropriated under the Act, and any past or future COVID-19-related measures.[252] It has broad authority to conduct investigations and audits aimed at preventing and detecting fraud, waste, abuse, and mismanagement, including as to private entities.[253] As provided under the Act, PRAC will operate for a little over five (5) years.[254] During its lifespan, it is required to submit semi-annual reports to Congress and inform appropriate Congressional committees if the information or assistance requested by it has been unreasonably

[249] Section 4018 of the Act.
[250] Latham & Watkins, 'Caring for the CARES Act: The New Oversight and Investigations Landscape for COVID-19 Relief Programs.' *Client Alert* [2020] (2705) 2.
[251] Section 4018(h) of the Act.
[252] Latham & Watkins (n 250) 3.
[253] Ibid.
[254] Section 15010(k) of the Act.

withheld.[255] The COC on the other hand is responsible for supervising the implementation of Title IV of the Act (Economic Stabilisation and Assistance to Severely Distressed Sectors of the United States Economy) by government, and assessing the effectiveness of Congressional efforts to provide economic stability in light of the pandemic.[256] It is empowered by the Act to take testimony, hold hearings, and receive evidence. Reports are to be forwarded to Congress every thirty days.[257] It has a lifespan of five (5) years. In addition to the above mechanisms, there is also the newly established House Select Subcommittee on the Coronavirus Pandemic (HSSCP). The HSSCP is an oversight body that is distinct and separate from the COC and is laser-focused on ensuring that: (a) taxpayer money goes to workers, pay cheques and benefits; (b) federal response is based on the best possible science and guided by health experts; and (c) money invested is not being exploited by profiteers and price gougers. It is empowered to examine all aspects of the federal COVID-19 response and has the powers of subpoena for its oversight duties. These new oversight bodies supplement existing civil and criminal enforcement mechanisms, including DOJ enforcement of federal fraud statutes (such as the False Claims Act), and the mandates of financial regulators and other agencies (such as the Internal Revenue Service and the Securities and Exchange Commission) to investigate and oversee activities within their respective areas of authority.[258] A combination of these mechanisms creates a matrix of dynamic interplay between law enforcement, internal oversight mechanisms, newly established mechanisms, and congressional oversight.

A legislation that is similar to the CARES Act in terms of multiple oversight regimes or mechanisms is the Emergency Economic Stabilization Act of 2008 (EESA). The EESA provides authority for the Secretary of the Treasury to purchase and insure "troubled assets" to provide

[255] Section 15010(d)(2)(A)(B); (e)(3)(C) of the Act.
[256] Latham & Watkins (n 250) 2.
[257] Section 4020(b)(2)(B)-(c) of the Act.
[258] Latham & Watkins (n 250) 2.

stability and prevent disruption in the economy and financial system.[259] It established two oversight bodies– the Financial Stability Oversight Board (FSOB) and Congressional Oversight Panel (COP) – and placed the function of auditing the programmes in the hands of the Special Inspector General for the Troubled Asset Relief Program (TARP), and the Comptroller General of the Government Accountability Office (GAO). Another relevant legislation is Leahy Law. The Leahy Laws or Leahy amendments (named after lead sponsor, Senator Patrick Leahy) are U.S. human rights laws that prohibit the U.S. Department of State and Department of Defence from providing military assistance to foreign security force units that violate human rights with impunity.[260] The law is implemented through a process known as "Leahy vetting" in which U.S. embassies, the Bureau of Democracy, Human Rights, and Labor, and the appropriate regional bureau of the U.S. Department of State vet potential recipients of security assistance, and if they are found to have been credibly implicated in serious abuse of human rights, assistance is denied until the host nation government takes effective steps to bring the responsible persons within the unit to justice.[261]

The mechanisms strategically deployed by the U.S. detailed above evince a cocktail of PLS measures. From the analysis, there is a composite application of legislative oversight; review clauses; sunset clauses; establishment of structures and institutions to carry out reviews, performance evaluation and impact assessments; submission of periodic reports by officials in the executive branch; and internal and external institutional reviews with reports to Congress. These features firmly establish the presence of PLS in legislative and even inter-branch practices and procedures in the United States even if only in terms of structures and functions, and not labels.

[259] Curtus W Copeland, 'Emergency Economic Stabilization Act: Preliminary Analysis of Oversight Provisions.' [2008] CRS Report for Congress 5.
[260] S Harrison, 'The "Leahy Laws" and U.S. Assistance to Ukraine.' *Just Security* (New York, 9 May 2022) <https://justsecurity.org> accessed 15 November 2023.
[261] Ibid.

CHAPTER FOUR

COMPARATIVE LESSONS OF POST-LEGISLATIVE SCRUTINY FOR NIGERIA

The previous chapter examined the operation or practice of PLS in Nigeria, the United Kingdom and the United States, in a bid to assess the state of PLS in Nigeria and also appreciate the unique details of PLS in the Parliament of the United Kingdom and the Congress of the United States. To properly capture salient lessons in the United Kingdom and United States models that Nigeria can learn from and adopt as part of its legislative practice and procedure, this chapter extracts comparative lessons from both models for Nigeria, and juxtaposes those lessons against the background of the Nigerian model.

4.1 Lessons from the United Kingdom Model

The United Kingdom is essentially the archetype of a fully institutionalised PLS framework. Indeed, the roots of PLS are fundamentally traceable to Europe and the United Kingdom, and the parliamentary model of PLS in the United Kingdom serves as a reference point for both Westminster-type and non-Westminster-type legislatures. Indeed, the practice of PLS by the United Kingdom is unique, especially as the practice has been adopted by both the UK Government and the Parliament. There is the combination, in a complementary fashion, of internal

scrutiny of government departments and parliamentary scrutiny, both in terms of PLS and oversight.

As reflected in the previous chapter, the PLS process in the United Kingdom commences with a post-implementation review impact assessment process by a government department, through which review is carried out. As earlier pointed out, Toro explained that although both post-implementation review (PIR) and PLS are ways of policy evaluation, they are not synonymous; policy evaluation is the most generic term to refer to a systematic evaluation of a regulatory policy, while PIR is meant to be a complement of the ex-ante evaluation done in the context of an "impact assessment;" PIR is a "revised version" of the impact assessment.[262]

To kickstart the process of PLS, relevant government departments are required, within 3 to 5 years of Royal Assent to an Act, to submit to the relevant House of Commons departmental select committee, a memorandum reporting on certain key elements of the Act's implementation and operation, with copies to stakeholders. This reflects the intentional involvement of stakeholders in the PLS process, thus bespeaking a collaborative process. In the House of Lords, the Lords Special Inquiry Committee is appointed to carry out PLS on specific Acts. Still in the House of Lords, the Lords Liaison Committee is responsible for selecting the Acts to be scrutinised on an *ad hoc* basis, and in due course, a select committee is established. This process is applicable to most government bills that reach Royal Assent, as well as to private members' bills that receive Royal Assent.

With respect to the memorandum to be submitted by relevant government departments to relevant parliamentary committees, it is a mandatory requirement with few exceptions, and in some cases, absolutely no need for submission. The usual period for submission is 3 to 5 years from the date of Royal Assent, although in some cases, the memorandum may be submitted outside the usual timeline. The memorandum must contain certain details; indeed, it must be detailed enough

[262] Constanza Toro, 'Post Legislative Scrutiny at Parliaments: The Case of Chile and UK.' *Latin American Legal Studies* [2018] (3) 294.

to enable the relevant select committee (or other parliamentary bodies) decide whether a much fuller PLS would be appropriate and to also make effective assessment as to how an Act is working in practice. This mandatory requirement with specifics on what is to be assessed makes for an intensive review or assessment that results in the clear ability to properly assess the relevant Acts and decide whether or not full PLS engagement is required. The implication is that PLS is commenced on a need-to basis, and not just for the sake of scrutiny. Thus, before the PLS process is commenced, the assessment obtained through the PIR process would reveal the need or otherwise to embark on PLS. This saves quality parliamentary time, resources and effort as they would be expended only in deserving cases.

There are notable differences in the way and manner in which PLS is undertaken by both Houses of the UK Parliament. While the *ad hoc* committees in the House of Lords are temporary in nature and are disbanded after they publish their reports, the departmental select committees in the House of Commons are essentially standing committees that mirror or are fashioned after government departments; they are broad in scope, long-term, and are sessional in nature– for the life of the parliamentary session. Unlike the House of Lords *ad hoc* committees, the House of Commons departmental select committees have PLS as one of their core tasks, making them independent and free to determine when to carry out PLS. This is different from the approach of Lords *ad hoc* committees that are set up for essentially the sole purpose, where necessary, of carrying out PLS. Generally, the reasons for selecting legislation for PLS are mainly based on triggers. Notwithstanding the differences in the structure and approach of both Houses of Parliament, the *ad hoc* committees in the House of Lords make proportionally more recommendations calling for action in relation to legislation, and also produce more recommendations relating to policy and practice. This is attributed to three central factors: (a) the House of Lords adopts a more technical approach to scrutiny; (b) expertise of Lords; and (c) more available time for Lords for detailed PLS. While the Commons focus on representation from

external organisations, the production of memoranda, and the salience of issues, the Lords focus on its subservient role in Parliament.

In addition to the above, there is the use of the oversight tool or scrutiny of government, a process that is undertaken by both Houses of Parliament and exercised mainly through parliamentary questions, evidence to committees, and statements to parliament. There is also a subtle form of fostering the aims of PLS by way of statutory instrument. Collectively, the foregoing tools or mechanisms make for a robust PLS process in the United Kingdom.

4.2 Lessons from the United States Model

The United States model of PLS presents several lessons that the Nigerian National Assembly can learn from. While there is no specially defined framework that goes by the name or description of 'PLS', there are very potent structures and mechanisms for monitoring and evaluating the implementation of laws and assessing their impacts. These structures and mechanisms have been found to be similar to, and in some cases, quite advanced than the usual PLS mechanisms. The absence of a label of PLS in the American Congress in spite of the presence of PLS structures affirms the Moulds and Khoo theory. Whilst commenting on the operation of PLS in Australia and Malaysia, Moulds and Khoo had posited that the term 'PLS' remains unknown mainly amongst lawyers and political scientists outside of the United Kingdom, including in Australia and Malaysia, but that this is not because PLS is absent in these or other jurisdictions; rather, it is because it is described differently and undertaken on an *ad hoc* basis.[263] This holds true particularly in the American system where mechanisms and processes that are similar to (and even more advanced than) PLS exist, but are in no way described as PLS. Thus, while the tag may not be available, the processes confirm the existence of PLS.

[263] Sarah Moulds and Ying Hooi Khoo, 'The Role of the People in Post Legislative Scrutiny: Perspectives from Malaysia and Australia.' *Journal of International Studies* [2020] (16) 2.

As the analysis in the previous chapter has shown, the United States has institutionalised mechanisms that compete favourably with the initiative and mechanisms of PLS. The US administration is overseen internally and externally, and this enables the proper assessment of the operation of laws and processes. Internally, each government department and most agencies have the Office of the Inspector General whose central task is to ensure probity. Congress also has non-partisan agencies at its disposal which avail it of requisite information on the performance of statutory processes through reports. This enables Congress to have readily available information on the impacts of laws, as well as the extent to which laws are being implemented by government departments and agencies. This process also saves Congress the stress of having to personally embark on assessments and reviews, as the non-partisan agencies have the function of carrying out those assessments and reviews, and reporting back to Congress.

The above process is supported by Congressional oversight which is carried out through the committee system, and empowered by legislation. Both Houses or Chambers of Congress are empowered to carry out oversight in respect of areas of their legislative competence, as assigned by the United States Constitution. The House and Senate Rules also provide for what is described as "special oversight" or comprehensive policy oversight for specified committees over matters that relate to their areas of jurisdiction. Additionally, the House Rules provide for Standing Committees which have general oversight responsibilities to assist the House in: (1) its analysis, appraisal and evaluation of: (i) the application, administration, execution, and effectiveness of federal laws, and (b) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and (2) its formulation, consideration and enactment of changes in federal laws, and of such additional legislation as may be necessary or appropriate. As well, most standing committees in the House are required to review and study on a continuing basis: (a) the application, administration, execution and effectiveness of laws and programmes addressing subjects within their jurisdiction; (b) the organisation and operation of federal agencies and entities having responsibility for the administration and execution of laws and programmes

addressing subjects within their jurisdiction; (c) conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within their jurisdiction; and (d) future research and forecasting on subjects within their jurisdiction. In the Senate, the Committee on Homeland Security and Government Affairs (whose jurisdiction supersedes that of any other committee) has the duty of *inter alia*, evaluating the effects of laws enacted to reorganise the legislative and executive branches of the Government. Also, there is the adoption of the mechanism of setting up monitoring frameworks in the body of legislation, and utilising review and sunset clauses. These tools and processes readily and profoundly evince the operation of PLS, as they aptly align with the mechanisms, processes and objectives of PLS.

In concise terms, the following points are noteworthy about PLS in the United States of America: (a) the U.S. adopts the style of utilising institutions or organisations external to Congress to handle monitoring and evaluation of legislation, for instance, the Government Accountability Office; (b) the office of the Inspector General is a feature of virtually every Department in the executive branch, which office is responsible for internal oversight; (c) while all Congressional committees have the power of oversight, there is a standing committee specially created for the purpose of oversight and accountability, having powers of oversight over the entire government; (d) congressional standing committees are each required to review and study on a continuing basis, the application, administration, execution, and effectiveness of laws within their respective areas of oversight jurisdiction; (e) monitoring and evaluating frameworks or institutions are created in the body of legislation, with oversight powers over the whole legislation or specific parts of it; and (f) effective use is made of review and sunset clauses. Thus, in the United States, there is a composite application of legislative oversight; review clauses; sunset clauses; establishment of structures and institutions to carry out reviews, performance evaluation and impact assessments; submission of periodic reports by officials in the executive branch; and internal and external institutional reviews with reports to Congress.

4.3 Juxtaposing the Nigerian Model

Nigeria lacks institutionalised systematic mechanisms to evaluate the impacts of laws enacted by the legislature in order to determine their effectiveness. Of the several PLS mechanisms or tools that are available globally, Nigeria mainly makes use of the legislative oversight mechanism. While this may be a limited but subtly encouraging tool, the operation of the tool has been beset by constraints such as executive interference, internal conflicts, inexperience of legislators, high rate of turnover of legislators, and compromise by the legislature. Additionally, the tool is generally flawed by the over-concentration in most cases, of legislative oversight on scrutiny of the financial accounts of Ministries, Departments and Agencies. While such scrutiny ensures financial probity and accountability to a large extent, continuous and in some cases, absolute fixation leads to utter neglect of other areas or aspects which deserve intense scrutiny, such as the level of implementation of legislation and impacts recorded. With the exception of a few committees, there is no express inclusion (in the Rules of both chambers of the NASS) of oversight over the implementation, enforcement, review or performance of enacted laws and evaluation of impacts. There is the use of the MTEF which acts a tool of oversight and PLS.

Apart from the oversight function or tool, Nigeria makes use of an imperceptible amount of mechanisms which align with those of PLS, to wit: (a) sunset clauses; (b) the insertion of provisions which establish structures or institutions that will ensure the implementation of legislation; and (c) submission of reports to the legislature by executive officials. There are also slight additions such as submission of reports to the Chief Justice of Nigeria, making recommendations for the review of primary and subsidiary legislation, publication of reports of activities, periodic review of programmes performance, submission of reports to the President, and the utilisation of an executive institution (such as the Budget Office) to monitor and evaluate implementation and the attainment of targets. While these additions are laudable, they appear in very few Acts, thus whittling down the composite effects that broad application would ordinarily have.

The above position reveals the stark reality that Nigeria needs to learn significantly from other countries and legislatures. From the analysis in the previous chapter, the United Kingdom and United States present veritable and indeed practicable lessons that Nigeria can learn from in respect of the practice of PLS. It is noteworthy that of the three countries under comparative analysis (Nigeria, the United Kingdom, and the United States), the United Kingdom has a different system of government (the parliamentary system) in which the lawmakers (Members of Parliament) double as the implementers of the law (by reason of some of them being Ministers in the Cabinet). This notwithstanding, while Nigeria may wish to adopt practices that are somewhat indigenous or suitable to the peculiar legislative needs or processes of the country, the United Kingdom and United States examples offer great insights into possible approaches that can be adopted. Concise details from the United Kingdom and United States models are juxtaposed below with the Nigerian model to explore the possibility of infusion of some practices.

From the United Kingdom, the following are extracted: (a) post-implementation review by government departments; (b) definite timeline for review; (c) PLS undertaken by both Houses of Parliament; (d) utilisation of the oversight function; (e) fostering the aims of PLS by statute. Post-implementation review as practiced in the United Kingdom, is a practice undertaken by a government department to assess the performance of an Act 3 to 5 years after its assent. This enables the relevant department to keep track of the process of implementation of the Act, the achievement of its statutory objectives, impacts made in the society, and to determine whether further review of the Act is required or not, all of which are communicated through a memorandum published and submitted to the legislature and stakeholders. This is a practice that can conveniently be adopted in Nigeria. Although the process is essentially an executive branch-based process, it can nonetheless be adopted in the same fashion as it indicates government or executive participation in the PLS process; a collective approach to PLS. This may be done initially by selecting the main institutions in critical sectors of the economy and charging them with the mandate and specifics of post-implementation review. To be effective, this would require statutory

intervention to expressly set out the fine details and requirements, and would also require prompt adherence to or compliance with those requirements.

The practice of a set timeline for review makes for a properly timed and planned process, and not one that may be launched at any time. It essentially fosters the drive to get Acts working effectively. The period of 3 to 5 years from the date of assent which aligns with the PLS review period allows for proper assessment of the workings of the legislation. This practice may be conveniently adopted in Nigeria. To however push for effectiveness of or compliance with such timeline, it might be necessary to incorporate it in legislation as a review clause. The practice of PLS by both Houses of Parliament makes for a composite process that involves Parliament as a whole, and not just one chamber or house. There are careful moves to avoid frictions or conflicts in the practice, possibly accounting for why both Houses adopt slightly different approaches to PLS. With two chambers of the National Assembly in Nigeria, PLS can conveniently be carried out by both chambers under carefully outlined processes that would forestall frictions or conflicts in the performance of PLS. The effective utilisation of the oversight function essentially strengthens the PLS process by ensuring that there is an all-round approach to scrutiny. This is aided by the fostering of PLS aims through legislation. With respect to the oversight function, as noted earlier, the efficient and effective utilisation of the oversight function in Nigeria have been beset by certain constraints that fundamentally challenge and question the utility, motive and effectiveness of the function. This has reduced the function to a hunting tool as described by scholars. What then is required is for the Nigerian National Assembly to strengthen its oversight function in line with democratic principles, the rule of law and constitutional dictates. There might also be the need provide legislation or some form of sustainable policy on PLS.

From the United States, the following are extracted and noted: there is a composite use and application of legislative oversight; review clauses; sunset clauses; establishment of structures and institutions in legislation to carry out reviews, performance evaluation and impact assessments; congressional committees are required to carry out some form of PLS; submission of periodic

reports by officials in the executive branch; and internal and external institutional reviews with reports to Congress. As hitherto stated, there is the need for the Nigerian National Assembly to strengthen its oversight function and completely detach the constraints that beset that function. This requires that the oversight function should be deployed in line with constitutional principles and the rule of law, and not as a hunting dog or tool for legislative compromise. With respect to review and sunset clauses, it has been observed that there is a complete absence of review clauses and a near absence of sunset clauses. Review clauses are essentially found only in Executive Orders of the executive branch and not in legislation enacted by the National Assembly. Sunset clauses are found only in Appropriation Acts as part of definite constitutional requirements. Review and sunset clauses can be conveniently inserted into fresh legislation, and even in existing legislation by way of amendment. While it may be a herculean task to insert either or both of them in all legislation, they can be inserted in select legislation (whether fresh or existing) in critical sectors of the economy. Another mechanism that is relevant is the establishment in legislation, of structures and institutions that will carry out review, performance evaluation, impact assessments and ensure the implementation of Acts. While this has been observed in some Nigerian legislation, they are present in only a few of them or in others, they are left to implication in the absence of express provisions. This mechanism, if broadly utilised, will align with the earlier referenced and recommended UK process of government departments carrying out post-implementation reviews.

With respect to the United States model, it is also observed that congressional committees are required to carry out some form of PLS, which entails *inter alia*, that committees in the House of Representatives review and study on a continuing basis, the application, administration, execution and effectiveness of laws and programmes addressing subjects within their jurisdiction. In the Senate, the Committee on Homeland Security and Government Affairs has the duty of *inter alia*, evaluating the effects of laws enacted to reorganise the legislative and executive branches of Government. While the Nigerian Senate and House of Representatives have standing committees on legislative compliance, which committees are ordinarily required to ensure *inter alia* that

enacted laws are implemented as intended, the proper functioning of these committees has essentially been hamstrung by the constraints that beset legislative oversight in Nigeria. There is thus the need to purposefully study the workings of the US model in this regard and significantly improve the Nigerian model.

The above analysis and juxtaposition have revealed that the Nigerian model is lacking in many respects. It has also revealed that there are highly practicable lessons that Nigeria can learn from the United Kingdom and United States models and infuse same in its legislative practice and procedure to make for a composite operation of PLS in Nigeria. The lessons from both models are not strange or opposed to infusion into the Nigerian system or model; they are rather complementary in nature. To properly adopt or infuse those salient lessons or practices, Nigeria needs to overhaul its legislative oversight process, as well as its approach to legislative practice and procedure. There is the need to structure and organise processes in a manner that will facilitate efficient and effective post-enactment reviews of laws.

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

This chapter presents a summary of the findings of the research. It equally presents the recommendations of the research which were premised on the findings. As well, the chapter details the contribution of the research to knowledge, the suggested areas for further research, and a conclusion.

5.1 Summary of Findings

The aim of the dissertation was to comparatively examine the practice of post-legislative scrutiny by the Parliament of the United Kingdom and the Congress of the United States, with a view to drawing valuable and practicable lessons that the Nigerian National Assembly can learn and adopt. Applying the doctrinal research methodology and comparative legal research, the dissertation analysed the practice of post-legislative scrutiny in the Nigerian National Assembly, the Parliament of the United Kingdom, and the Congress of the United States in a bid to have a composite platform for comparative analysis and recommendations. The analysis revealed striking details about the respective legislatures which are summarised below.

The first research question inquired about the state of legislative oversight and PLS in Nigeria. The question was addressed by surveying, in Chapter 2, perspectives of scholars on the state of the legislative oversight function of the Nigerian National Assembly, and examining in Chapter 3, the practice of PLS in Nigeria so as to ascertain its current state. The study found that on a general note, the legislative oversight function of the National Assembly is in a poor state as it has been

beset by several constraints that frontally challenge its credibility, utility and relevance. These constraints range from executive interference, internal conflicts, and the inexperience of some legislators, to the high rate of turnover of legislators, and compromise by the legislature. The study also found that the oversight function has mostly been abused by legislators through the weaponisation of the tool, and the over-concentration in most cases, on the scrutiny of the financial accounts of MDAs to the detriment of other important areas (such as post-enactment evaluation), thus resulting in the ineffectiveness of the tool and its inability to support the aims of PLS. As well, the study found that in respect of the state of PLS in Nigeria, Nigeria lacks a fully institutionalised and systematic mechanism for the evaluation of laws in terms of their level of implementation and achievement of statutory objectives. Again, the study found that PLS is yet to be firmly rooted in Nigeria and that although there are subtle tools for evaluation, the tools have been selectively and ineffectively deployed.

The second research question inquired about the practice of PLS by the Parliament of the United Kingdom and the Congress of the United States. The question was addressed by examining the practice of PLS by the Parliament of the United Kingdom and the Congress of the United States in Chapter 3. The study found that in the United Kingdom, there is a fully institutionalised framework for PLS which actively involves the executive and legislative/parliamentary branches. The study further found that the PLS process in the United Kingdom commences with a post-implementation review or impact assessment process by a government department within a specified timeline, which could result in full PLS by the Parliament. The study equally found that PLS is undertaken by both Houses of the UK Parliament in slightly different forms as while the House of Commons undertakes the process through its departmental select committees, the House of Lords undertakes its own through *ad hoc* committees. On the whole, the study found that the Parliament of the United Kingdom has a robust PLS process, even as there is the additional use of the oversight or scrutiny tool and the fostering of the aims of PLS by way of statutory instrument. In respect of the Congress of the United States, the study found that while there is strictly speaking,

no specially defined framework that goes by the name or description of "PLS", there are very potent structures and mechanisms for monitoring and evaluating the implementation of laws and assessing their impacts, all of which are very similar to, and in some cases, more advanced than the usual PLS mechanisms. On the whole, the study found that in the United States, there is a composite application of legislative oversight; review clauses; sunset clauses; establishment of structures and institutions to carry out reviews, performance evaluation and impact assessments; submission of periodic reports by officials in the executive branch; and internal and external institutional reviews with reports to Congress.

The third research question inquired about the useful lessons that Nigeria can learn from the practice of PLS in the United Kingdom and the United States. The question was addressed in Chapter 4 by extracting comparative lessons from the United Kingdom and United States models of PLS, and juxtaposing them with the Nigerian model in a bid to reveal the practicability of those lessons. The results of the study indicate that although the Nigerian model is lacking in many respects, there are highly practicable lessons that Nigeria can learn from the United Kingdom and United States models and infuse same in its legislative practice and procedure to make for a composite operation of PLS in Nigeria. The study found that the lessons include the use of post-implementation reviews; definite timelines for review of legislation; dual undertaking of PLS by both chambers of the legislature; effective utilisation of the oversight function; fostering the aims of PLS by statute; effective utilisation of review and sunset clauses; and the establishment of structures and institutions in legislation to carry out reviews, performance evaluation and impact assessments.

5.2 Recommendations

Based on the findings of this research, the following recommendations are made:

1. The Nigerian National Assembly should understudy legislatures across jurisdictions that have successfully implemented PLS. This will enable it to have an in-depth understanding of PLS and its application.
2. The Nigerian National Assembly should make effective use of review and sunset clauses. As it stands, there is clear absence of review clauses and near absence of sunset clauses. The effective utilisation of review and sunset clauses depicts an understanding of the dynamism of laws and societies. The National Assembly therefore needs to adopt the practice of effectively using review and sunset clauses in legislation.
3. The oversight mechanism is not just an effective tool for ensuring executive and judicial accountability, but one that also ensures the effective implementation of legislation. Oversight powers have been abused in many instances by the Nigerian National Assembly. There is an urgent need for a paradigm shift in this regard which requires an overhauling of the oversight function and process.
4. Although the Nigerian Senate and House of Representatives have several committees, some of which are required by the Rules of each House to ensure the implementation of enacted laws, such requirement has, in a number of cases, remained mere rhetoric. There is thus the need for a rejuvenation of the commitment of legislators to the duty of ensuring that laws are implemented as intended, and that desired statutory objectives are achieved. One of the ways through which this can be achieved is the deployment of a cocktail of mechanisms for advancing PLS, and conscientious oversight and performance appraisal of laws and institutions.
5. There is the need for urgent legislative review, in partnership with relevant stakeholders, of all Acts in Nigeria. This is necessary to reassess the relevance of each Act, as well as the level of implementation and whether they have in any way achieved some, most or all of their statutory objectives.

6. It is highly recommended that the practice of post-legislative scrutiny should be adopted in Nigeria, especially in view of its success in the United Kingdom and the United States which share legislative and other similarities with Nigeria.
7. Training programmes on PLS and other aspects of legislative practice and procedure should be regularly organised for legislators in the National Assembly. This will ensure that legislators will be constantly apprised of new developments in legislative practice, as well as the dynamism of PLS.
8. PLS should be included in the Legislative Agenda of every legislative assembly of the National Assembly. This will ensure that it is part and parcel of successive legislative assemblies, and not just a practice that may be temporarily adopted and subsequently abandoned.
9. As a way of infusing PLS, there is the need to empower statutory institutions in Nigeria to carry out post-implementation reviews of their constitutive Acts and other Acts related to their areas of jurisdiction. Additionally, more institutions should be established for the purpose of implementing and monitoring PLS.
10. PLS should also be embraced by State Houses of Assembly in Nigeria so as to entrench the practice of PLS at the State level. This will ensure that State laws will also benefit from the unique practice which will keep them relevant.

5.3 Contribution to Knowledge

The primary aim of the researcher in this dissertation was to comparatively examine the practice of PLS by the Parliament of the United Kingdom and the Congress of the United States, with a view to drawing valuable and practicable lessons that the Nigerian National Assembly can learn and adopt. This dissertation offers an innovative analytical and methodological approach to research on PLS, and broadens understanding of the practice of PLS in the Parliament of the United Kingdom and the Congress of the United States of America. While there are studies on PLS in

many legislatures and jurisdictions but none on the Congress of the United States, this study has analysed the practice of PLS in the United States Congress. It revealed, whilst affirming the Moulds and Khoo theory, that although there is no process in the United States described as PLS, the structures and processes on ground seamlessly align with and in some cases, even surpass the tools, methods and mechanisms of PLS. Additionally, while comparative studies on PLS have often compared the operation or practice of PLS in Westminster-type parliaments and legislatures, and others have analysed PLS in Europe and the Americas, none has compared the practice in the Parliament of the United Kingdom with that in the Congress of the United States of America. This dissertation carried out a comparative analysis of PLS in the United Kingdom and United States, an evaluation not previously done. Again, while the few studies on PLS in Nigeria have expressed the view that PLS essentially does not exist in Nigeria, this dissertation has shown that although there is no firm footing or structure of PLS in place, there are some tools in Nigeria (though quite dysfunctional and poorly deployed) which align with those of PLS. The dissertation therefore makes profound contributions to literature and knowledge on PLS.

5.4 Suggested Areas for Further Research

While this study provides valuable insights into the practice of PLS in Nigeria, the United Kingdom and the United States, there are several avenues for future research that could build upon the research findings in this dissertation. The study did not focus on the practice of PLS in regional and subnational legislatures. Future research can appraise the practice of PLS in regional and subnational legislatures in and across several continents, either using individual or comparative approaches. Future research could also consider an analysis of the practice of PLS in non-Westminster-type legislatures. Also, the study focused on PLS of primary legislation, but did not focus on or consider PLS of secondary legislation. Future research could explore the practice of PLS on secondary legislation in different legislatures. Future research may also explore the practice of gender-sensitive PLS (and other collocations) across different legislatures, whether

they are Westminster-type or non-Westminster-type national legislatures. This may also be extended to regional and subnational legislatures. Future research may equally explore such aspects as PLS of gender-specific legislation, comparative analysis of PLS in African legislatures, and digital approaches to PLS.

5.5 Conclusion

As an emerging aspect of legislative practice, post-legislative scrutiny represents a special process that is designed for the purpose of monitoring and evaluating the implementation and impact of legislation, with a view to ensuring that laws are implemented as intended. Its development flows from the profound shift in legislative thinking and practice from focus on mere enactment of legislation, to improved quality and effectiveness of legislation. In line with the drive for more inclusive, impactful and proactive legislation, legislatures around the world have adopted post-legislative scrutiny as a fundamental aspect of legislative practice and procedure. This dissertation sought to comparatively examine the practice of PLS by the Parliament of the United Kingdom and the Congress of the United States, with a view to drawing valuable and practicable lessons that the Nigerian National Assembly can learn and adopt. The study found *inter alia* that whilst the practice of PLS in Nigeria is lacking in many respects, there are highly practicable lessons that Nigeria can learn from the United Kingdom and United States models of PLS and infuse same in its legislative practice and procedure to make for a composite operation of PLS in Nigeria. Based on the findings of the study, recommendations were made. Without a shadow of doubt, PLS is a unique process that has the ability to significantly transform legislative practice and procedure in Nigeria. To properly entrench the process in Nigeria, certain steps must be taken to tackle the challenges that confront effective legislative practice. In the final analysis, there is the need for the Nigerian National Assembly to adopt and infuse post-legislative scrutiny into its legislative practice in order to strengthen its oversight function that has often been perceived as ineffective, and ensure that laws are implemented as intended and desired impacts achieved.

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