

**EXAMINATION OF THE ROLE OF CIVIL SOCIETY  
ORGANISATIONS IN POST-LEGISLATIVE SCRUTINY**

**BY**

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

**MAY, 2024**

## **CERTIFICATION**

I certify that this dissertation is a product of my research efforts, undertaken under the supervision of Dr. Sam Oguche. It is an original work and no part of it has ever been presented for the award of any degree. All sources of information used have been duly acknowledged through references.

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## APPROVAL PAGE

This dissertation titled “Examination of the Role of Civil Society Organisations in Post-Legislative Scrutiny” by FAITH AKATI KI JOSEPH has been read and approved as having met the requirements for the award of the degree of Masters of Laws in Legislative Drafting (LLM) of the National Institute for Legislative and Democratic Studies/University of Benin, Edo State.

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## **DEDICATION**

This research work is dedicated firstly to God and my loving parents, siblings, and friends for their unending support and motivation.

## **ACKNOWLEDGMENTS**

My gratitude goes to my loving parents Mr Joseph Attah and Mrs. Margret Attah, my friends, and all my siblings for their moral support and perseverance. I am sincerely grateful to my supervisor Dr. Sam Oguce, for his immense support and guidance throughout this research. I am also grateful to the National Institute of Legislative and Democratic Studies for giving me the wonderful platform to undertake this program. Finally, I thank all my classmates and congratulate them for completing this program.

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The Companies and Allied Matters Act (CAMA) 2020, Cap.20 L.F.N 2004.

## **LIST OF ABBREVIATIONS**

PLS	Post-Legislative Scrutiny
CSOs	Civil Society Organisations
MDAs	Ministries Departments and Agencies
CFRN	Constitution of the Federal Republic of Nigeria
LFN	Laws of the Federation of Nigeria
UK	United Kingdom
NASS	National Assembly of Nigeria
WFD	Westminster Foundation for Democracy
NGOs	Non-governmental organisations
NILDS	National Institute for Legislative and Democratic Studies
NDI	National Democratic Institute for International Affairs
AGF	Attorney-General of the Federation

## ABSTRACT

Post-legislative scrutiny (PLS) is essential for ensuring the effective implementation of laws and their beneficial impact on citizens. However, the current PLS approach in the form of legislative oversight in Nigeria, predominantly involves the legislature, Law Reform Commission, and government ministries, departments, and agencies (MDAs), adopting a "top-down" approach with limited citizens engagement and no effective channels for citizens to connect with Parliament. This underscores a disconnect between citizens and lawmakers, resulting in an inadequate understanding of real-world impacts of legislation, thereby questioning the effectiveness and inclusiveness of the current PLS approach. This research explores the potential of Civil Society Organisations (CSOs) as pivotal independent actors in PLS, with capacity to bridge the existing gaps in the current approach. It also underscores the absence of enabling legal and institutional environment for CSO participation in PLS. The primary objectives of this research are to examine the need and significance of CSO involvement in PLS, identify strategies and tools for CSO engagement, and identify the challenges and foster solutions for CSO engagement in PLS. The justification for this research lies in its potential to shift the current PLS approach from a top-down to a more to a more inclusive, bottom-up approach, ensuring laws are effective and aligned with societal needs.

The methodology employed for this research was doctrinal, also referred to as desk or library research. This method provides a diverse and multidimensional perspective, drawing from legal principles, statutes, and existing scholarly works. Both primary and secondary sources, including statutes, case law, textbooks, and journals, were explored to achieve the research objectives.

The findings of this research underscore the need for the involvement of CSOs as pivotal actors capable of enhancing the inclusiveness and effectiveness of PLS. As citizen representatives and

intermediaries, CSOs can bridge the current gap between people and lawmakers, reshaping the current approach of PLS into a more "bottom-up" and inclusive approach. Additionally, the research also reveals a lack of formal collaboration between CSOs and the legislature during PLS, with no effective strategies and tools in place to foster such collaboration. Lastly, it reveals the underlying challenges hindering CSO engagement in PLS, which include; inadequate regulatory and institutional frameworks, lack of legislative support, insufficient funding and resources, inadequate training and awareness.

Based on these findings, the research recommends leveraging CSOs' strategic position and their direct engagement with law beneficiaries to access independent, beneficiary-driven and valuable feedback to enhance PLS inclusiveness, transparency, and effectiveness, ensuring laws better serve societal needs. The legislature should also establish formal mechanisms for CSO engagement by introducing or amending relevant legislation, rules, and standing orders. Reviewing existing committee structures and reactivating the civil society liaison office in the National Assembly to focus on PLS activities. Lastly, Educating both CSOs and legislators on their collaborative potential in PLS and ensuring adequate resources and capacity building are also essential. In Conclusion, Adopting these recommendations will optimize PLS benefits, ensuring laws are effective and aligned with societal needs, thus fostering transparency and overall inclusiveness of the democratic process.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

Laws are created in response to society's needs and challenges at a given time. To remain relevant, laws must continuously serve the specific purposes or objectives that necessitate its enactment. Once a law fails to meet its objectives or has fulfilled its purpose, it becomes spent, ineffective, irrelevant, and ultimately useless. Thus, the ongoing evaluation and adjustment of laws are essential to ensure they remain functional and beneficial to society.

The National Assembly of Nigeria in discharging its constitutional duty has enacted laws over the years cutting across several sectors in Nigeria, with the Law of the Federation of Nigeria (LFN) 2004 Containing over Five hundred and fifty-two laws excluding laws that have been made after 2004, in addition to these are other subsidiary legislations made by various bodies vested with such powers. Despite its abundance of laws covering almost every relevant sector, it is trite that the country is overwhelmed by myriad challenges ranging from economic, social justice, human rights, insecurity, cybercrimes, and environmental sustainability challenges amongst others, which points out that a lot of the legislations have failed to serve its purpose, hence the need to review laws to ensure its effectiveness in meeting its objectives; this process of reviewing laws passed by the Legislature in recent time is termed post-legislative scrutiny.

Post-legislative scrutiny (PLS) is the process of reviewing and evaluating laws after they have been enacted to assess their implementation, effectiveness, and impact. Post-legislative Scrutiny presents an avenue to evaluate how legislation affects the welfare of every citizen and to rectify any unforeseen determinants or disparities stemming from factors like gender, sexual orientation, disability, income, education, geography, ethnicity, language, religion, economy, or other

considerations. It encompasses the array of mechanisms and practices employed to oversee and appraise the enactment of laws, ensuring they serve constituents in line with lawmakers' original intentions.<sup>1</sup>

Post-legislative scrutiny encompasses two primary dimensions:

1. Assessing the initiation and enforcement of a piece of legislation, determining whether its legal provisions have been implemented, and identifying any barriers or challenges encountered during implementation.
2. Assessing the impacts of legislation on the targeted population or issue to ascertain whether its intended policy objectives have been achieved.

During the post-legislative scrutiny process, the Legislature reviews legislation to determine if the law is still relevant in the current context; considering changes in social, economic, or technological conditions that might affect the law's applicability. The legislature also identifies unintended consequences; detects any negative or unforeseen outcomes resulting from the law, analyses how these unintended consequences can be mitigated, and makes recommendations for improvement; suggesting the amendment, repeal, or enhancement of the law based on findings. The significance of PLS lies in its ability to ensure that legislation meets its intended objectives, serves public interests, and remains responsive to evolving societal needs. By scrutinising the implementation and outcomes of laws, PLS contributes to accountability, transparency, and the enhancement of legislative quality. However, the effective conduct of PLS requires diverse perspectives, expertise, and active engagement from various stakeholders, including CSOs.

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<sup>1</sup> Careccia, Grazia and Wallace, Alicia, 'Post-Legislative Scrutiny: From a Model for Parliamentarians to a CSO Strategic and Operational Tool', *Westminster Foundation for Democracy (WFD)*, (2022). <<https://www.wfd.org/what-we-do/resources/post-legislative-scrutiny-model-parliamentarians-cso-strategic-and-operational>> Accessed 17th February 2024.

In the Nigerian context, the role of the legislature to conduct post-legislative scrutiny primarily falls within its legislative oversight function as stipulated in sections 88 (2)(a) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) and its authority to repeal and amend laws inherent in section 4 of the 1999 CFRN and various standing orders of the house. The National Assembly, Law Reform Commission, executive comprising government Ministries, Departments, and Agencies (MDAs), or its bodies are primary actors in the post-legislative scrutiny process in Nigeria. The legislative committee in carrying out its oversight function relies primarily on information from the MDAs, this follows the practice of PLS in the UK and other parliaments where PLS committees rely on memoranda and reports from government departments and bodies to conduct PLS.<sup>2</sup> However, relying solely on the same categories of bodies (Executive) for implementation and impact assessment could lead to incomplete and biased outcomes. Governments often prioritise their work, sometimes avoiding acknowledgement of failures or adverse effects, and providing minimal insight into how their implementation approaches may have adversely impacted the citizens who are the beneficiaries.

This current approach to post-legislative scrutiny often needs more comprehensive citizen engagement, potentially resulting in gaps in understanding the practical impact of legislation on beneficiaries. To ensure Post-Legislative Scrutiny is as efficient and effective as possible, legislators should conduct an inclusive process that allows participation from primary stakeholders within the legislative circle as well as independent actors. In this context, civil society organisations (CSOs) emerge as potential primary independent actors for fostering accountability, transparency, and responsiveness within the Post-legislative scrutiny process.

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<sup>2</sup> Philip Norton, 'post-legislative scrutiny in the UK Parliament: adding value', *The Journal of Legislative Studies*, [2019], Volume 25, Issue 3. <<https://doi.org/10.1080/13572334.2019.1633778>> accessed 11<sup>th</sup> January 2024.



The evolution of democratic governance has seen a proliferation of CSOs globally. CSOs, comprising non-governmental organisations (NGOs), advocacy groups, grassroots movements, and community-based organisations, play a pivotal role in upholding democratic principles by fostering accountability, transparency, and effective governance. CSOs are recognised as advocates and watchdogs, facilitating citizen participation and ensuring that government programs and activities advance the public interest. CSOs play a crucial role in complementing government efforts across diverse fields, including education, health, gender equality, environmental protection, and economic development. Consequently, the breadth of CSOs' activities and involvement parallels the wide-ranging influence of law, which governs nearly every facet of citizens' lives within a governing system. Moreso, the downstream role of CSOs involves representing and engaging with various segments of society that directly experience the outcomes of government laws and policies. As a result, CSOs possess insights into changes in laws and the tangible effects of laws on the intended beneficiaries.<sup>3</sup>

Over the years civil society organisations have taken up several roles and have facilitated avenues for engagement with legislators during lawmaking. CSOs provide feedback on draft bills, participate in public hearings, and raise awareness about legislative activities. They also support the legislature in capacity building; for instance, in the 9th Assembly, a civil society organisation PLAC assisted the office of the Deputy President of the Senate in developing its first strategic plan since the return to civilian rule in 1999.<sup>4</sup>

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<sup>3</sup> (n1).

<sup>4</sup> Otive Igbuzor, 'The Legislature, Civil Society Organisations and Development Partners', *Dawodu*, (May 12, 2023). <<https://dawodu.com/articles/the-legislature-civil-society-organisations-and-development-partners-1601>> Accessed 18<sup>th</sup> January 2024.

Additionally, PLAC has organised training sessions for members and staff of the National Assembly, offered technical advice to various committees on bill drafting, research, and analysis, and enhanced public understanding of the National Assembly's work. Through the establishment of a civil society liaison office, PLAC has fostered a strong collaborative relationship between civil society and the National Assembly.<sup>5</sup> However, there is little or almost no formal collaboration between the National Assembly and CSOs in the post-legislative stage as it relates to post-legislative scrutiny. Existing literature and practice within the legislature often focus on their involvement in the legislative process itself or on the pre-legislative stage, overlooking the critical phase of implementation and post-evaluation of laws.

It's widely acknowledged that the partnership between the Legislature and CSOs can be beneficial, as they offer distinct platforms for representation that complement each other.<sup>6</sup> Additionally, based on CSOs' strategic role at the intersection between the people and government, there is a need for their involvement in the scrutiny of laws to ensure the post-legislative Scrutiny process is effective and inclusive. Seember Nyager in his paper presentation for PLAC identified CSOs' engagement with the legislature as the best practice for inclusive lawmaking.<sup>7</sup>

Additionally, effective post-legislative scrutiny relies on data collection, analysis, and research. Civil society organisations (CSOs) can act as vital conduits for gathering information and offer

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<sup>5</sup> Policy and Legal Advocacy Centre (PLAC), 'CSOs, Legislators Agree on Need for CSO Representative Office' (November 16, 2022) <<https://placng.org/Legist/csos-legislators-agree-on-need-for-cso-representative-office/>> accessed 24th January 2024.

<sup>6</sup> National Assembly of Bhutan, 'Parliament and Civil Society Organisations - A Strategy Document', <[https://www.idea.int/sites/default/files/Parliament-CSO%20Strategy%20Document\\_Digital%20Copy.pdf](https://www.idea.int/sites/default/files/Parliament-CSO%20Strategy%20Document_Digital%20Copy.pdf)> (accessed 1st February, 2024).

<sup>7</sup> Seember Nyager, 'Civil Society Engagement with the Legislature for Rights-based Lawmaking', *Policy and Legal Advocacy Center* (January 23, 2018).

professional, relevant, and technical support to enhance lawmaking and the implementation of laws. In the realm of post-legislative scrutiny, CSOs emerge as pivotal actors, significantly influencing the monitoring, evaluation, and advocacy for legislative accountability, transparency, and ensuring public participation in governance and the responsiveness of laws.

Lastly, there are no sufficient formal strategies, tools, and institutional and legal framework for civil society engagement in the post-legislative scrutiny process in Nigeria, as the concept of post-legislative scrutiny even though having its constitutional backing in the constitution its practice is still novel as there are no formally established structure and mechanism of carrying out PLS, this has affected the conduct of effective post-legislative scrutiny in Nigeria.

This research seeks to explore the need for the involvement of principal and independent actors like CSOs in the post-legislative scrutiny process; it underscores CSOs' contribution and impact to the evaluation of enacted laws, identifies challenges and barriers they encounter in carrying out this role and provides significant recommendations for fostering a conducive legal and institutional framework for CSOs involvement in the post-legislative process.

By shedding light on the dynamics of CSO involvement in post-legislative scrutiny, this research aims to provide insights and guide legislators, and Civil Society Organisations to strengthen collaboration, improve accountability, and enhance the responsiveness of legislation to the needs and aspirations of the society it serves.

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

Post-legislative scrutiny (PLS) is essential for ensuring the effective implementation of laws and their beneficial impact on citizens, thereby enhancing the effectiveness of laws and the overall quality of governance. In Nigeria, the current PLS approach in the form of legislative oversight, predominantly involves the legislature, the Law Reform Commission, and government

ministries, departments, and agencies (MDAs). Legislative committees rely heavily on information from MDAs, adopting a "top-down" approach that often fails to incorporate feedback from the very individuals these laws are meant to serve.

The reliance on the same categories of bodies (Executive) for implementation and impact assessment could lead to incomplete and biased outcomes, as governments often prioritise their work, sometimes avoiding acknowledgement of failures or adverse effects, and providing minimal insight into how their implementation approaches may have adversely impacted the citizens. Furthermore, the current PLS approach lacks a structured mechanism for gathering citizen feedback on the impact of parliamentary laws, with no effective channels for citizens to connect with Parliament in the PLS process. This gap highlights a significant disconnect between citizens and lawmakers, resulting in an inadequate understanding of the real-world impacts of legislation on its intended beneficiaries and raising questions about the effectiveness and inclusiveness of the current PLS approach.

In this context, civil society organisations (CSOs) emerge as potential key actors in enhancing inclusiveness, transparency, and responsiveness within PLS. Although CSOs are recognised for their role in promoting transparency, accountability, and public participation, their involvement in PLS remains largely overlooked and underutilised. While in theory, CSOs can engage in all phases of the legislative process, There is minimal collaboration between CSOs and the legislature in the post-legislative stage, specifically in post-legislative scrutiny. This gap raises questions about how to better integrate CSOs into PLS to improve the inclusiveness and effectiveness of PLS and democratic governance generally.

Additionally, the process of collecting and analysing data in PLS requires technical expertise that legislative committees may lack. The current data collection by these committees is insufficient, highlighting the need for collaboration with CSOs with relevant expertise and access to relevant data through their work. Furthermore, there are no sufficient formal strategies, tools, and institutional or legal frameworks for CSOs' engagement in the PLS, and are faced with varied barriers that potentially hinder their engagement in the PLS process. This underscores the need for a more enabling legal and institutional environment for CSO participation in effective PLS practices.

Therefore, this study identifies the critical need to involve CSOs as independent actors in PLS to ensure a more robust, inclusive, and citizen-centric approach. It aims to explore the barriers to CSO engagement, propose strategies for enhancing their participation, and advocate for a more enabling legal and institutional environment. By addressing these issues, the study seeks to ensure that laws are inclusive, relevant, and effective in serving public interests, thereby strengthening democratic governance and legislative oversight in Nigeria.

### **1.3 Research Questions**

The following research questions have been framed from the above statement of problem:

- a. Why is the involvement of CSOs in post-legislative scrutiny necessary and significant?
- b. What strategies and tools can be adopted to foster the engagement of CSOs in post-legislative scrutiny in Nigeria?
- c. What are the potential challenges hindering CSOs' involvement in post-legislative scrutiny and what solutions can address these challenges?

## **1.4 Aim and Objectives of the Study**

The central aim of this study is to critically examine the role of Civil Society Organisations in post-legislative scrutiny and identify the need for Civil society and legislature partnership in the post-legislative scrutiny process to ensure a more inclusive and effective post-legislative scrutiny process in Nigeria.

The specific objectives are to:

- a. examine the need and significance of CSOs involvement in post-legislative scrutiny;
- b. identify necessary strategies and tools for Civil society organisations' engagement in the post-legislative scrutiny process in Nigeria; and
- c. identify the challenges and foster solutions to civil society organisations' engagement in post-legislative scrutiny.

## **1.5 Scope and Limitation of the Study**

The geographical focus of this research is the Nigeria National Assembly; however, reference is made to other Countries but only to aid a better understanding of the concept of this research. The scope of this study is limited to examining civil society organisations and the National Assembly in Nigeria. The analytical scope of this research is to comprehensively evaluate the roles of civil society organisations in the post-legislative Scrutiny process in Nigeria.

## **1.6 Significance of the Study**

This work brings a unique approach and perspective to post-legislative scrutiny by pointing out the potential of Civil Society Organisations as important/primary actors and partners in the Post post-legislative scrutiny process. It underscores their ability to bridge the gap between parliament and citizens by providing valuable, independent, citizen-centric data, experiences, and feedback on the impact of legislation, thus addressing a notable deficiency in the current PLS approach

and practice. This would point out to the legislators, CSOs, and scholars the necessity and impact of civil society organisations' engagement and the relevance of considering citizens' opinions/data in the process of reviewing existing laws, which could significantly impact the effectiveness of post-legislative scrutiny.

Lastly, this study highlights essential mechanisms, strategies, and tools that can be utilised to effectively involve stakeholders. It also identifies and addresses the potential obstacles hindering Civil Society Organisations' participation in the Post Legislative Scrutiny process in Nigeria. Given that Post-Legislative Scrutiny constitutes a vital aspect of parliamentary oversight, adopting an inclusive approach will bolster governance accountability and improve service delivery to citizens.

## **1.7 Research Methodology**

The methodology employed in this research is doctrinal, employing a tiered approach to assess the potential contributions of individuals and non-governmental entities to post-legislative processes. The main advantage of adopting this doctrinal approach is to give a more diverse, multidimensional discussion and perspective to the research drawing from legal principles and the works of existing scholars in this field.

## CHAPTER TWO

### CONCEPTUAL FRAMEWORK, HISTORICAL DEVELOPMENT AND LITERATURE REVIEW

This chapter covers the conceptual framework, historical development, and literature review. It comprehensively discusses the meaning, rationale, and significance of PLS, alongside its historical development. Additionally, it provides in depth understanding of CSOs, including their historical development, governance framework, their role and engagement with the legislature in Nigeria.

#### 2.1 Meaning of Post-Legislative Scrutiny

Post-legislative scrutiny (PLS) is interpreted diversely among different legislatures and stakeholders. It may be referred to as post-legislative scrutiny, ex-post impact assessment, or evaluation of legislation, depending on the context and jurisdiction. In many cases, legislative bodies engage in PLS activities as part of their oversight and legislative scrutiny functions without explicitly labelling them as such. Nevertheless, regardless of the nomenclature used, the core objective remains consistent; to assess the implementation and effects of enacted legislation. Positioned at the nexus of legislative and oversight functions of legislative bodies, PLS is widely acknowledged to comprise two principal dimensions.<sup>8</sup>

1. **Implementation of legislation:** It examines the enactment of laws, scrutinising whether the prescribed legal provisions have been effectively implemented by the relevant implementation body, how judicial bodies have construed the legislation and the utilisation of the law by legal practitioners and citizens.

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<sup>8</sup> Franklin De Vrieze, 'Principles of Post-Legislative Scrutiny by Parliaments' *Westminster Foundation for Democracy* (2018). <<https://www.agora-parl.org/sites/default/files/agora-documents/Principles%20of%20Post-Legislative%20Scrutiny.pdf>> accessed 10<sup>th</sup> January 2024.



2. **Impact of the Legislation:** Secondly, it assesses the impact of legislation, focusing on whether the intended policy objectives have been achieved, and the extent to which these laws have influenced the well-being and livelihood of the populace.

Post-legislative scrutiny entails a systematic and structured examination of the implementation and impact of legislation. This process provides legislatures with an avenue to assess the effectiveness, efficiency, and societal ramifications of enacted laws.<sup>9</sup> It is the process through which the legislature evaluates the efficiency and impact of a law after it comes into practice. This is usually conducted by committees, who may then recommend amending the law or the way it is implemented. The Scottish Parliament defines PLS as “a term for an inquiry that looks back at an act of the Scottish Parliament, or part of an act, to see if it is working as planned.”<sup>10</sup>

The Law Commission of England and Wales defines PLS as the systematic evaluation of enacted laws to ascertain their implementation and enforcement, along with an assessment of their impact or efficacy.<sup>11</sup> Franklin De Vrieze characterises Post-Legislative Scrutiny as an independent endeavour empowering the legislature to self-assess, reflect on the democratic quality of its outputs, and gauge its technical competence.<sup>12</sup>

Within the scope of this study, post-legislative scrutiny pertains to the mechanism or practice through which the legislature assesses and monitors the execution of legislation by relevant implementing bodies, and evaluates the law's impact on citizens to ensure that it serves the constituents in alignment with the original intentions of the lawmakers.

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<sup>9</sup> Franklin De Vrieze and Victoria Hasson, ‘Post-Legislative Scrutiny; Comparative Study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance’ *Westminster Foundation for Democracy* (2017). <<https://www.wfd.org/sites/default/files/2022-01/Comparative-Study-PLS-WEB.pdf>> accessed 15th February 2024.

<sup>10</sup> The Scottish parliament, ‘Post-legislative scrutiny’, *official website of Scottish parliament* <<https://www.parliament.scot/bills-and-laws/post-legislative-scrutiny>> accessed on the 11<sup>th</sup> of January 2024.

<sup>11</sup> The Law Commission ‘Post-Legislative Scrutiny’ Law Com No 302 (2006) Consultation Paper No 178. <<https://lawcom.gov.uk/project/post-legislative-scrutiny/>> accessed 14th February 2024.

<sup>12</sup> (n 9).

### 2.1.1 Who can undertake Post Legislative Scrutiny?

PLS is increasingly acknowledged as a crucial component of the legislative process, representing a novel facet within the legislature's oversight function. Its implementation and scope differ across nations. In numerous countries, autonomous entities, such as equality bodies, ombudspersons, or national human rights institutions, are entrusted with the responsibility of scrutinising and evaluating laws about specific domains such as equality legislation, fundamental rights, and children's rights. Their specialised knowledge, impartiality, and autonomy position them favourably to offer expert perspectives for post-legislative scrutiny.<sup>13</sup>

Typically, post-legislative scrutiny is led by the parliament or legislature, which is constitutionally tasked with enacting laws and is increasingly taking an active role not only in passing legislation but also in overseeing its implementation. Various mechanisms such as committees, commissions, external bodies, or independent agencies may be employed by legislatures for this purpose. Among these, legislative committees are the most commonly used worldwide, providing a direct avenue for engagement. De Vrieze and Norton noted that in certain legislative bodies, such as those referenced in their article, the review of enacted legislation is conducted by the Legal or Legislative Committee, while thematic committees assess the effectiveness of laws in achieving their intended objectives. In specific instances, the responsibility for post-legislative scrutiny is explicitly designated to a dedicated committee, as observed in the practices of the Scottish and Lebanese parliaments.<sup>14</sup>

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<sup>13</sup> Franklin De Vrieze and Maria Mousmouti, 'Parliamentary innovation through post-legislative scrutiny; Manual for parliaments' *Westminster Foundation for Democracy* (2023). <<https://www.wfd.org/what-we-do/resources/parliamentary-innovation-through-post-legislative-scrutiny>> accessed 12<sup>th</sup> January 2024.

<sup>14</sup> Franklin De Vrieze & Philip Norton, 'The significance of post-legislative scrutiny', *The Journal of Legislative Studies*, [2020], Volume 26, Issue 3. <<https://doi.org/10.1080/13572334.2020.1780008> > accessed 14<sup>th</sup> February 2024.

In certain parliamentary systems like Indonesia, the Legal or Legislative Committee is tasked with evaluating the enactment of legislation, examining the issuance of secondary legislation, and considering relevant court rulings. While thematic committees assess the impact of laws and the extent to which their objectives are achieved.<sup>15</sup> In the UK, this responsibility falls upon the committees in both Houses of Parliament. In the House of Commons, departmental select committees (sessional committees) conduct this oversight, shadowing government departments, who upon completing their review, submit a memorandum of findings to the relevant departmental select committee for further scrutiny if deemed necessary by the committee. In contrast, the House of Lords follows a more systematic approach, appointing an ad hoc committee (now termed a special inquiry committee) appointed annually to review specific measures. While House of Commons sessional committees operate for the duration of a parliamentary term, which can span up to five years, House of Lords ad hoc committees are dissolved after publishing their reports on the measure or measures for which they were constituted.<sup>16</sup>

In Nigeria, the responsibility for conducting post-legislative scrutiny is embedded within the oversight function of the National Assembly carried out through its committee system. According to Section 88 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN), the legislature is endowed with the authority to investigate and scrutinise the actions of the executive and its agencies. Furthermore, Section 88(2)(a) of the 1999 CFRN grants the legislature the power to conduct investigations, summon relevant individuals, and gather evidence to review legislation and correct any deficiencies in existing laws. Consequently, if there is dissatisfaction

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<sup>15</sup> Ibid.

<sup>16</sup> Dr Tom Caygill, 'post-legislative scrutiny in the UK Parliament', *The Post-Legislative Scrutiny Series*, Nottingham Trent University (2021) Series, 1. < <https://www.wfd.org/sites/default/files/2021-12/2021-10-18-PLS-in-the-UK-Parliament-Dr-Thomas-Caygill-FINAL.pdf> > accessed 15th February 2024.

with the current state of the law, prompted by citizens or other independent entities, it is the legislature's responsibility to initiate reforms through amendments or repeals of the law.

It is pertinent to highlight that, post-legislative scrutiny (PLS) is not the sole responsibility of one institution. Effective PLS is a collaborative endeavour, primarily led by the legislature, but involving dialogue among various stakeholders about the law, its impacts, and ways to enhance outcomes. This process necessitates input and cooperation from multiple actors both within and outside the legislature.

There are various methods to establish this binding requirement for PLS before law, this could include:<sup>17</sup>

- a. Ministerial undertakings at bill enactment, akin to the UK Parliament's practice, where the Government commits to reviewing legislation within a stipulated timeframe.
- b. Integration of review clauses during bill passage, mandating a review after a specified duration, thus legally enforcing the assessment.
- c. Inclusion of sunset clauses, which automatically terminate a law or provision's effect after a predetermined period unless a review sustains its validity.

Establishing a binding mandate for legislative implementation review by the legislature is highly desirable to ensure effective governance.

### **2.1.2 Rationale for Post-Legislative Scrutiny**

The legislature plays a critical role in enacting laws that meet society's changing needs. These laws define roles, confer powers, and authorise public services. Traditionally, the legislative process was seen as introducing a bill, debating it, and granting assent. However, this view has shifted recently. Legislative success is now measured by an Act's ability to achieve its policy

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<sup>17</sup> (n 8).

objectives, rather than just its formal enactment, passage, and assent.<sup>18</sup> Lord Norton of Louth, UK House of Lords in support of this stated that *'Public expectations of parliaments' legislative success have evolved substantially, from getting laws on the statute book to ensuring that laws are brought into effect and their implementation has an impact.'*

However, a law's true effects and implications can only be assessed through implementation, determining if its policy or legal objectives have been met effectively or have resulted in unintended consequences. Therefore, Parliamentarians should follow up on implementation and evaluate if the law achieves its intended results. This systematic assessment, known as post-legislative scrutiny, is considered the final stage of the end-to-end legislative process.<sup>19</sup>

In many countries, including Nigeria, laws may be enacted but not implemented, or there may be insufficient information about their implementation and impact. Effective implementation is complex, requiring resource mobilisation and various factors, and is influenced by changing circumstances, resource diversion, goal deflection, stakeholder resistance, and legal changes. Post-legislative scrutiny (PLS) serves as a crucial mechanism for the legislature to evaluate laws' implementation, impact, and effectiveness.<sup>20</sup> Regular scrutiny ensures that laws achieve their intended goals and identifies alternative methods if they do not. It also ensures that implementation is as intended and considers the perspectives of those affected by the laws. Thus, PLS is essential for assessing law efficacy, identifying adverse effects on rights, the

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<sup>18</sup> (n16).

<sup>19</sup> Alex Brazier, 'Post-Legislative Scrutiny',. *Global Partners Governance, Guide to Parliaments* (2017), Paper 8. <<https://gpgovernance.net/wp-content/uploads/2021/02/Guide-to-Parliaments.-Paper-8-Post-Leg-Scrutiny1.pdf>> accessed 14<sup>th</sup> January 2024.

<sup>20</sup> *Ibid* (n.8).

environment, and economic-social welfare, and measuring government accountability as part of legislative oversight.<sup>21</sup>

Furthermore, the increasing adoption of Post-Legislative Scrutiny (PLS) aligns with efforts to streamline the law-making process and address the rising demand for high-quality legislation amidst increasing complexity.<sup>22</sup> PLS institutionalises a systematic analysis aimed at enhancing the quality of enacted laws, by facilitating legislators' understanding of the cause-and-effect relationship between legislation and its outcomes.<sup>23</sup> This process fosters a learning environment within legislatures, enriching their comprehension of legislation impacts and refining their capacity to cater to stakeholders' needs. Consequently, PLS holds the potential to mitigate ambiguity and distrust, facilitating experiential learning for legislators. By serving as a self-monitoring and evaluative mechanism, PLS enables legislatures to reflect on the democratic efficacy of their outputs and their technical competence.<sup>24</sup>

Lastly, the practice of PLS encompasses legislative oversight, serving as a monitoring and evaluation mechanism through which legislatures review governmental actions or inactions. It scrutinises how the government manages the effective implementation of policies, its adherence to statutory obligations, and how it utilises the resources available to it in the process. Viewed from this perspective, PLS offers a parliamentary approach that goes beyond lawmaking, transforming the legislature into a legislative watchdog responsible for overseeing the government's performance in the implementation of the law.

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<sup>21</sup> Ibid.

<sup>22</sup> Richard Heaton, 'When Laws Become Too Complex: A review into the causes of complex legislation' *Cabinet Office - Office of the Parliamentary Counsel* (2013). <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/187015/GoodLaw\\_report\\_8April\\_AP.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/187015/GoodLaw_report_8April_AP.pdf)> accessed 11<sup>th</sup> January 2024.

<sup>23</sup> (n8).

<sup>24</sup> (n2).

In pursuit of its objectives, Post-Legislative Scrutiny endeavours for Parliament to oversee the enactment of laws it has passed, evaluating both successful implementations and areas necessitating improvement. This process facilitates the collection of citizen feedback on law implementation, aiding Parliament in refining laws to continuously benefit society. According to the UK Law Commission, the necessity for PLS stems from these four reasons:<sup>25</sup>

1. To evaluate whether legislation is effectively functioning as intended in practice.
2. To contribute to the enhancement of regulatory frameworks.
3. To enhance focus on the implementation and achievement of policy objectives.
4. To identify and disseminate best practices, thereby facilitating learning from both successes and shortcomings revealed by the scrutiny.

These rationales further extend to:<sup>26</sup>

1. Ensuring compliance with democratic governance principles, legality, and legal certainty.
2. Facilitating timely recognition of adverse effects of new legislation.
3. Establishing a robust framework for assessing legislative efficacy.
4. Fostering improvements in legislative quality through experiential learning in terms of what works or not and the relationship between the objectives and outcomes.

### **2.1.3 Significance of Post-Legislative Scrutiny**

PLS offers the legislature an avenue to examine the experience of those affected by the laws they have enacted. It promotes an end-to-end legislative process that allows post-implementation follow-up to ensure that a law achieves its originally intended purpose, but which can also be used to highlight its successes to identify future best practices and lessons for upcoming

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<sup>25</sup> (n11).

<sup>26</sup> Ibid

legislation, to this end, PLS can be regarded as a public good, enhancing the quality of legislation, thereby promoting good and effective governance system.

While Post-legislative scrutiny operates as a distinct mechanism within parliament; it is a result of the legislature's effective oversight of the executive and its commitment to effective law-making. By evaluating government actions or inactions and amending various laws, parliament assesses whether the country's laws are suitable and whether the government is effectively implementing policies and meeting legal obligations. Through post-legislative scrutiny, the legislature can reflect on its procedures and fulfil its constitutional duties. This process, grounded in specific parliamentary activities, significantly influences the broader governance framework of the country.<sup>27</sup>

Furthermore, subjecting government actions to such scrutiny could instil a heightened level of discipline in governmental practices, fostering a greater emphasis on efficiency. In various nations, ministers often measure success by the passage of their executive bills into law. In countries like Nigeria, there is a tendency for ministers to prioritise the quantity of subordinate legislation passed, often without considering the efficiency or impact of these laws, with many of them remaining unimplemented. However, ministers might exercise more caution if they were aware that future assessments of their success would not solely hinge on the passage of bills or the quantity of subordinate legislation, but rather on the impact and effectiveness of such legislation in achieving its policy objectives. As such, PLS enhances the overall quality of governance.<sup>28</sup>

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<sup>27</sup> (n14)

<sup>28</sup> Ibid



Post-legislative scrutiny allows legislatures to evaluate the impact of laws on various sectors and groups, such as gender or minorities. This process helps assess how laws interact with social structures and determine legislative priorities. Key areas for scrutiny include gender, minority, human rights, regulatory, and environmental impacts. For instance, laws often affect men and women differently. By systematically analysing laws based on their impact on different demographic groups, potential disadvantages can be identified and addressed. This gender analysis ensures equal opportunities and legal protections for all, prompting lawmakers to consider who is affected by issues resulting from enacted laws and propose solutions.<sup>29</sup>

Post-legislative scrutiny, as highlighted in the Constitution Committee's Report 2004,<sup>30</sup> can redirect the attention of legislative drafters from merely ensuring the technical correctness of drafted laws to also contemplating their real-world impact. The Committee advocates for routine post-legislative scrutiny to assess whether enacted laws have fulfilled their intended objectives. The awareness of the possibility of post-evaluation of the law could prompt drafters to adopt a more comprehensive approach to bill formulation, extending their consideration beyond the point of assent and encouraging them to give greater consideration to the intended beneficiaries of the legislation. Ultimately, effective post-legislative scrutiny has the potential to:

- a. improve the quality and adequacy of Laws;
- b. ensure effective implementation of laws;
- c. improve compliance with the law;
- d. improve the quality of government; and
- e. lead to broader impacts of the law.

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<sup>29</sup> (n2).

<sup>30</sup> House Of Lords Select Committee on the Constitution, 'Parliament and the Legislative Process' HL Paper 173-I (2004), Vol I Report, 14th Report, Session 2003-04, <<https://publications.parliament.uk/pa/ld200304/ldselect/ldconst/173/173.pdf>> accessed 14th February 2024.

## 2.2 Historical Development of Post-Legislative Scrutiny

Post-legislative scrutiny is a tradition of parliaments rooted in its legislative and oversight function. However, its formal inception can be traced back to 2004, when the House of Lords Constitution Committee, chaired by Philip Norton, published a report titled "Parliament and the Legislative Process." Although previous examinations had been made, notably by the Rippon Commission in 1992 and a Procedure Committee report in 1990, the 2004 report stood out for its comprehensive approach to the legislative process and its subsequent impact.<sup>31</sup>

The committee examined both the input and output sides of legislation, considering whether Parliament could be involved in both drafting and implementing laws. It also looked at how both Houses could be strengthened in scrutinising and influencing bills once introduced. The committee supported extending a practice started in 1997, where some bills were reviewed by a parliamentary committee before formal introduction to Parliament, allowing for early feedback and potential influence on the bill's content. However, this practice was applied to only a minority of bills, and the committee advocated for pre-legislative scrutiny to become the norm, while almost neglecting post-legislative scrutiny.

The committee noted that Parliament paid little attention to measures once enacted, with reviews of Acts by parliamentary committees being rare and usually only occurring when there were visible unintended consequences. There was no systematic scrutiny, and parliamentary committees did not prioritise it. The committee argued for routine post-legislative scrutiny,

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<sup>31</sup> UK Parliament, 'Review of House of Lords Investigative and Scrutiny Committees: towards a new thematic committee structure Contents', *official UK parliament website*, <<https://publications.parliament.uk/pa/ld201719/ldselect/ldliaison/398/39809.htm>> accessed 13<sup>th</sup> January 2024.

recommending that Acts be reviewed within three years of their commencement or six years after enactment, whichever was sooner.<sup>32</sup>

Despite widespread agreement on the principle and importance of post-legislative scrutiny, implementing it proved challenging. Previous recommendations had not led to action. In response to the committee's report, the government acknowledged the value of post-legislative scrutiny but did not act on the recommendations, instead referring the matter to the Law Commission for further examination.

In its subsequent report, the Law Commission endorsed the Constitution Committee's recommendation for systematic post-legislative scrutiny and suggested appointing a joint committee of both Houses for this purpose.<sup>33</sup> In 2008, the government agreed with the Commission's approach but proposed different schemes of scrutiny, suggesting that Commons committees decide whether to conduct post-legislative scrutiny. To support this, the government introduced a formal requirement for an explanatory memorandum on the implementation of legislation to be produced three to five years after Royal Assent, to be submitted to the relevant departmental select committee. In the House of Lords, a more systematic approach was adopted, with an ad hoc (now known as a special inquiry) committee appointed each year to review specific measures.<sup>34</sup>

This practice has been followed by both the House of Commons and the House of Lords. Between December 2008 and the dissolution of Parliament in April 2010, government figures indicate that seven memoranda were published. During the previous Coalition Government and

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<sup>32</sup> Ibid.

<sup>33</sup> (n14).

<sup>34</sup> Ibid

up to January 2013, government post-legislative scrutiny memoranda were published, with only three becoming the subject of dedicated committee reports.

The first House of Lords post-legislative scrutiny committee was established in the 2012–13 session to review adoption legislation. In 2013–14, exceptionally, two post-legislative committees were appointed, and one has been appointed each subsequent year. A total of eight House of Lords post-legislative scrutiny committees have now reported, making this practice well-established. However, our focus here is on the formal recognition and evolution of post-legislative scrutiny and its global adoption by legislatures around the world. As Sarah Moulds notes in her analysis of the Australian experience, the developments in the UK have influenced other nations, particularly those with a Westminster heritage or receiving development assistance from UK donors or aid agencies.<sup>35</sup>

## **2.3 Civil Society Organisations**

### **2.3.1 Historical Development of Civil Society Organisations**

The origin of Civil Society Organisations dates back to Ancient Greece; nevertheless, throughout history, political theorists such as Thomas Paine and George Hegel have played pivotal roles in influencing and shaping the notion of civil society as a separate entity from the state. While this concept is not new, there has been a considerable increase in the size, scope, and capacity of civil society activities in recent times.<sup>36</sup> Over the past decades, CSOs have rapidly emerged as key players in promoting democracy and development across Africa. The need to uphold democratic principles and the widening gaps in social services due to structural adjustment programs have

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<sup>35</sup> (n14)

<sup>36</sup> Aisha Ghaus-Pasha, 'Role of Civil Society Organisations in Governance' *Semantic* (2004). <<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan019594.pdf>> accessed 15<sup>th</sup> January 2024; Thomas Carothers, 'Think Again: Civil society' (1999). <<http://www.osf.am/wpcontent/uploads/2013/03/Carothers-on-Civil-society.pdf>>

created space for and necessitated civil society activities. Within this civil society space, a variety of formal and informal organisations, known as CSOs, operate. Globally, the idea of civil society has evolved from these associational platforms to include a diverse range of organised and organic groups of various forms, sizes, and functions.

The inception of civil society organisations in Nigeria traces its roots to the colonial era, marked by the emergence of organised groups such as the Nigerian Union of Students, Nigeria Youth Movement, Aba Women's Group, and labour unions like the Railway Workers Union. These groups vehemently opposed oppressive conditions, policies, and exploitation imposed by colonial rule. The collaborative efforts of these organisations laid the groundwork for the pro-democracy movement, actively contributing to Nigeria's independence in the 1960s and shaping post-colonial governance.<sup>37</sup>

During the post-colonial period, civil society groups like the Civil Liberty Organisations, Committee for the Defence of Human Rights, Constitutional Right Projects, and Campaign for Democracy played crucial roles in resisting military oppression; they complemented the efforts of students, marketers, labour unions, and professional organisations in advocating for human rights, social justice, socio-economic rights, and democratic principles. These groups significantly contributed to upholding democratic principles and led the establishment of democratic governance till the fourth republic/1990s.<sup>38</sup>

In the post-1999 era, non-governmental organisations, now commonly referred to as CSOs, experienced significant growth and diversification. Their focus has expanded from political

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<sup>37</sup> PLAC, 'PLAC Production: Brief History of Organized Civil Society in Nigeria (Part 1)' (2022).<<https://placng.org/Legist/plac-production-brief-history-of-organised-civil-society-in-nigeria-part-1/>> accessed 27<sup>th</sup> January 2024.

<sup>38</sup> PLAC, 'Brief History of Organised Civil Society in Nigeria (Part 2)' (2022).<<https://placng.org/Legist/plac-production-brief-history-of-organised-civil-society-in-nigeria-part-2/>> accessed 27th January 2024.

rights to include socio-economic rights and issue-based advocacy. CSOs have become more varied, engaging in activities such as humanitarian assistance, peacebuilding, women and youth empowerment, disability rights, health education, and climate justice, as well as research, policy, and legislative advocacy. CSOs' operations in modern times are extensive, covering almost every aspect of citizens' lives and existence, which is a significant attribute of law.

### **2.3.2 Understanding Civil Society Organisation**

The concept of civil society organisations (CSOs) is characterised by conflicting and inconsistent definitions, yet many scholars emphasise their autonomous and voluntary nature. CSOs are often described as an intermediary space between the state and individuals, comprising organisations separate from the government that operate autonomously and are voluntarily formed by members of society to protect or promote their interests or values.<sup>39</sup>

Widely acknowledged as a crucial third sector alongside government and the private sector, CSOs play a vital role in promoting good governance by fostering transparency, effectiveness, openness, inclusion, responsiveness, and accountability.<sup>40</sup> They achieve this through various means, such as legislative advocacy, policy analysis, monitoring state performance and the conduct of public officials, fostering social capital, mobilising specific constituencies, and engaging in development efforts. Consequently, over time, civil society organisations have earned the moniker of 'watchdogs,' holding governments and institutions accountable. For

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<sup>39</sup> Sang, Lian Thang Peter, 'The role of civil society in promoting democracy, good governance, peace and national reconciliation in Myanmar' (2013). <<https://uia.brage.unit.no/uia-xmlui/bitstream/handle/11250/136540/Sang%2c%20Lian%20Thang%20Peter%20oppgaven.pdf?sequence=1&isAllowed=y>> accessed January 14th 2024.

<sup>40</sup> Larry Diamond, 'Developing democracy: Towards consolidation' (Baltimore and London: John Hopkins University Press 1999).

instance, some CSOs monitor budget allocations, policy and law implementation, and human rights violations, and disseminate information to both domestic and international audiences.

White, similarly defines CSOs as an intermediary space between the state and families, comprising autonomous organisations formed voluntarily by society members to safeguard or promote their interests or values. For example, in the United States, the three sectors include the public sector (government), the private sector (businesses), and the civil sector (CSOs), which operate in the public interest without profit or government control. CSOs encompass groups with shared interests that are independent of government control and prioritise the welfare of their members and broader society, considering cultural, political, scientific, religious, or philanthropic factors.<sup>41</sup>

Ikelegbe characterises Civil Society Organisations (CSOs) as both a structural framework and an analytical tool for understanding politics and development. He defines CSOs as the primary non-state entities through which individuals interact with each other and engage with the state for socio-political purposes. These organisations consist of diverse and overlapping non-governmental institutions that articulate, project, and defend collective interests. Ikelegbe emphasises that the leadership, membership, constituencies, interests, and tendencies of CSOs shape their relations with the state and determine the issues they address and the methods of engagement. In essence, Ikelegbe underscores the intermediary role of CSOs in driving political and socio-economic development.<sup>42</sup>

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<sup>41</sup> White, G, "Civil Society, Democratization and development: Clearing the Analytical Grounds", *Democratization*, [1994], Volume 1, Issue 2. <<https://www.tandfonline.com/doi/abs/10.1080/13510349408403399>> accessed 17th January 2024.

<sup>42</sup> Augustine O. Ikelegbe, 'The State and Civil Society in Nigeria: Towards a Partnership for Sustainable Development', *CPED Monograph*, [2013], Series No.7. <[https://www.academia.edu/66645310/The\\_State\\_and\\_Civil\\_Society\\_in\\_Nigeria\\_Towards\\_a\\_Partnership\\_for\\_Sustainable\\_Development](https://www.academia.edu/66645310/The_State_and_Civil_Society_in_Nigeria_Towards_a_Partnership_for_Sustainable_Development)> accessed 17<sup>th</sup> January 2024.

However, this research adopts Imobighe's definition of CSOs, identifying them as a collective of local or international non-governmental organisations, professionals, and associations of various sizes within a society; with the primary purpose of addressing gaps in social services and engaging with the government on issues affecting the populace. CSOs are the vehicle through which citizens get involved in the nation's polity and give legitimacy to the government's decisions. While CSOs may not represent society in its entirety, their diversity, plurality, and overlapping nature ensure they reflect the perspectives and voices of a significant portion of the population.<sup>43</sup> The collective efforts of civil society organisations, spanning diverse interests, issues, and sectors, have the potential to foster comprehensive development within the state.

From the preceding discussion, we can distil the following core characteristics of civil society organisations:

- i. They are organised groups and activities comprised of voluntary participation, operating at either grassroots, national, or international levels.
- ii. These entities are independent of government ownership or control, maintaining autonomy from state influence.
- iii. Their focus lies in developmental, social welfare, and humanitarian endeavours.
- iv. They endeavour to shape public policy, laws, and governmental actions through advocacy efforts.
- v. They may also undertake direct actions and provide assistance where needed.
- vi. Their initiatives often centre around specific issues, such as gender equality, poverty alleviation, security concerns, human rights, and governance.

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<sup>43</sup> Imobighe, T. A. *Introduction: Civil society, ethnic nationalism and nation building in Nigeria* (Spectrum Books Limited, Ibadan, Nigeria, 2003).



- vii. They aim to promote the interests and address the needs of their members, communities, and supporters, addressing prevailing social realities.
- viii. They operate within the framework of citizen rights, the rule of law, democratic principles, civility, and pluralism.
- ix. Their financial resources are not distributed among members or boards of trustees, except as compensation for specific services rendered.

CSOs may be established at the grassroots level or as part of national or international collectives. They encompass a diverse array of voluntary, independent organisations, including NGOs, think tanks, media outlets, and social and religious groups. In Nigeria, civil society spans professional bodies, labour unions, youth groups, cultural associations, and more, all working to advance various interests for development. These groups serve as vital platforms for citizens to pursue their interests amidst challenges like poverty, insecurity, and governmental shortcomings. They play essential roles in addressing societal needs and fostering development despite obstacles such as corruption and inefficiency within post-colonial administrations.

Civil society organisations (CSOs) in Nigeria have become significant instruments for fostering societal peace, advancement, and stability. They actively engage in addressing pressing community issues through partnerships and collaborations, particularly in areas beyond government reach. CSOs play pivotal roles in ensuring social accountability by monitoring policy impacts, particularly in terms of promoting equality, public education, public interest, and meeting public needs. The CSOs Action Coalition on Education for All (CSACEFA) exemplifies this, comprising NGOs, community-based organisations, and faith-based groups dedicated to addressing education-related challenges in Nigeria. During the 2023 general elections, CSOs like

YIAGA Africa didn't merely observe irregularities; they intervened actively to uphold the political rights of the masses and seek clarity on the situation.<sup>44</sup>

### **2.3.3 Regulatory Framework Governing the Registration and Operation of CSOs In Nigeria.**

The regulatory framework governing the registration and operation of CSOs varies in different countries. In Nigeria, the Corporate Affairs Commission is charged primarily with the registration of CSOs in line with the Companies and Allied Matters Act (CAMA), Part B, Part F (2020), and the Companies Regulations 2021. Other Laws like the Constitution of the Federal Republic of Nigeria (1999), African [Banjul] Charter on Human and Peoples Rights (1981), Freedom of Information Act 2011, Nigerian Cooperative Societies Act (NCA) 2004 National Planning Commission Act 1993, Nigeria Code for Corporate Governance 2018 legalise the operation of CSOs and also regulate operations and registration of CSOs in Nigeria.

The operation or activities of CSOs are sectoral based, depending on their thematic areas of operation, CSOs are also governed by sectoral legal and regulatory frameworks that govern thematic areas like the Child's Rights Act 2003, Electoral Act 2022, Violence against Persons Prohibition Act 2015, etc. Furthermore, the operation of civil society is also regulated by tax laws, money laundering and Anti-terrorism financing laws, and related laws like the Finance Act 2020, National Planning Commission Act 1993, National Financial Intelligence Unit ACT, 2018 Independent Corrupt Practices and other related offences Act 2000, Money Laundering (Prohibition) Act as Amended, 2011 and tax-related laws like the Federal Inland Revenue Service (Establishment) Act, 2007, Companies and Income Tax Act 2007, Personal Income Tax

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<sup>44</sup>Celestina E. Chukwudi1& Samuel S. Ojo, 'Civil Society Organisations and Sustenance of Democratization in Nigeria', *African Journal of Politics and Administrative Studies (AJPAS)*, [2023], 16(1):18- 33. <<https://www.ajpasebsu.org.ng/>>

Act 1993 amongst others. Additionally, CSOs have taken up self-regulatory initiatives like adopting codes of conduct, ethics, and good practices over the years to regulate their operation and ensure accountability and good governance.

### **2.3.4 The Role of CSOs in the Legislative Process**

The Legislature and civil society organisations are both representative institutions; while the legislature is a legitimate representative, the civil society organisations are voluntary representatives. Although CSOs are not directly involved in the enactment of laws, their involvement is indispensable in ensuring that legislation aligns with constitutional principles and complies with international legal standards. CSOs fulfill various functions throughout the legislative process which I will be discussing below.

Civil society organisations (CSOs) actively engage in the legislative process by engaging in bill analysis, submitting memoranda, offering expert opinions, and delivering presentations during public hearings. They have the flexibility to lead, support, remain neutral, or oppose proposed bills at their discretion. This platform, at this stage, amplifies the voices and interests of citizens ensuring that the proposed law serves the public interest and aligns with constitutional principles and international standards, thereby building a link between parliaments and the people they represent. In some cases, CSOs may even take on the role of drafting and proposing a bill to the legislative house.

However, it is important to note that the regulations governing CSO's involvement in the legislative process vary across countries. For instance, in Bosnia and Herzegovina, members of parliament, government ministries, or the president can submit draft laws, whereas civil society organisations (CSOs) generally do not submit draft laws. Conversely, in Nigeria, CSOs are

allowed to participate in drafting laws but cannot introduce a bill on the National Assembly floor.<sup>45</sup>

Additionally, civil society organisations (CSOs) actively engage in lobbying and advocacy at every stage of the legislative process, spanning from the first readings to the final assent by the president, as witnessed in Nigeria. Across these stages, CSOs employ a range of strategies, such as organising workshops, initiating campaigns, and holding rallies, and town hall meetings to mobilise public support for the bill. Furthermore, they strategically lobby legislators or the president to secure passage or assent, thereby ensuring the bill attains the required approval. CSOs also keep track of legislators who endorse their bills, leveraging this information to apply pressure on the legislature.

CSOs play a vital role in monitoring and raising awareness about proposed laws throughout the legislative process. They keep citizens well-informed about the actions and responsibilities of legislators. They use national laws, like the Freedom of Information Act (FOI) 2011, to access information on proposed laws at every step of the legislative process; keeping citizens informed and educating them on the potential impact of proposed laws. During the law-making process, CSOs facilitate public participation by enabling citizens to provide input through opinions and comments on bills. In some cases, CSOs mobilise constituencies to support or oppose bills that may have adverse effects on them. Through this, CSOs encourage greater citizen participation in politics and public affairs.

In many countries, CSOs play a crucial role in educating legislators and staff about their duties in a democratic government. They enhance the capacity of legislators to assess proposed laws, engage with civil society, and oversee the executive branch. The evolving role of CSOs goes

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<sup>45</sup> Ibid

beyond traditional watchdog functions to more nuanced ones such as partners. The main aim however remains to maintain pressure on the legislature to function effectively and ensure legislation cognizant of the Constitution, national values, and international obligations. In these partnerships, CSOs collaborate with legislators on research, capacity building, institutional development, legislative reviews, recommendations, and monitoring of elections.<sup>46</sup>

Additionally, civil society organisations can enhance legislative oversight by engaging in budget analysis, tracking, and monitoring. They actively participate in the scrutiny and approval of budgets within the Legislature. Moreover, CSOs play a crucial role in creating budget-tracking templates or systems, enabling citizens' groups to monitor budgets. Subsequently, the legislature can leverage these reports in its oversight efforts.

Finally, CSOs can play a crucial role by offering feedback on implemented laws to support post-legislative reform. They can contribute the perspectives and experience of citizens with the law and provide insights gained from their interactions with individuals affected by the law, providing valuable evidence to persuade legislators to make necessary amendments. While theoretically, CSOs can engage in all phases of the legislative process, their role in the post-legislative stage is often overlooked and remains underutilised in applications.

### **2.3.5 Civil Society Organisation Engagement with the Legislature in Nigeria**

Over the years civil society organisations have taken up several roles which have provided opportunities for engagement with legislators in Nigeria. CSOs engage in capacity building and training for legislators, providing support to legislatures and committees. For instance, the Policy and Legal Advocacy Centre (PLAC) conducts training for National Assembly members and

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<sup>46</sup> Ochonma, C, 'Assessment Of Civil Society Organisation - Legislature Partnership: A Case Study Of The First And Second Sessions Of The 9Th National Assembly', *NILDS Institutional Repository* (2021). <<https://ir.nilds.gov.ng/handle/123456789/947>> accessed 28th February 2024.

staff, offering technical advice on bill drafting, research, and analysis. PLAC works alongside legislative committees to bolster their effectiveness, particularly in key areas such as finance, appropriation, electoral matters, and constitutional reform. During the 9th Assembly, PLAC provided crucial support to the Deputy President of the Senate in developing a strategic plan, marking the first instance of such collaboration since 1999.<sup>47</sup> For instance, PLAC recently organised the Consultative Meeting on Strategy for Engaging with the National Assembly Committees on Human Rights in 2023, with backing from the National Endowment for Democracy. This initiative aimed to forge a partnership between human rights civil society organisations (CSOs) and the Human Rights Committees of the 10th Assembly, to address the deteriorating human rights situation.<sup>48</sup>

Similarly, the Civil Society Legislative Advocacy Center (CISLAC) also engages in the training of legislators, emphasising the impact of legislation on Sustainable Development Goals. CISLAC's training encompasses various aspects such as legislative assistance, power dynamics, constituent relations, constitutional mandates of legislative committees, and methods to integrate civil society participation in budgetary policy. Likewise, the African Centre for Leadership, Strategy & Development (Centre LSD) aids reform-oriented legislators in setting progressive agendas, initiating laws, and preventing anti-people legislation in the National Assembly.<sup>49</sup>

Additionally, CSOs in Nigeria play crucial roles in the legislative process. These organisations actively participate in legislative advocacy, analyse bills, provide feedback on draft bills, and engage in public hearings, expressing either support or opposition to proposed legislation. CSOs

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<sup>47</sup> Ibid.

<sup>48</sup> Policy and Legal Advocacy Centre (PLAC), 'PLAC Event: Consultative Meeting on Strategy for Engaging with NASS Committees on Human Rights', *PLAC* (November 10, 2023). < <https://placng.org/Legist/plac-event-consultative-meeting-on-strategy-for-engaging-with-nass-committees-on-human-rights/> >, accessed 17<sup>th</sup> January 2024.

<sup>49</sup> Ibid.

also play a vital role in mobilising constituents to rally behind or against specific bills, contributing significantly to the advocacy for the passage of bills in the National Assembly. For instance, the Youth Initiative for Advocacy, Growth, and Advancement (YIAGA) and various other youth groups in 2017, mobilised more than a thousand young individuals in Abuja to push for the passage of the Age Reduction Bill, popularly referred to as the "Not Too Young to Run" bill. This initiative sought to amend Sections 65, 106, 131, and 177 of the constitution to increase youth participation in governance. YIAGA also maintained scorecards of Houses of Assemblies who supported and ratified their bills to exert pressure on the legislature. Due to the pressure exerted by YIAGA and young people, the bill received presidential assent in 2018.<sup>50</sup>

Similarly, CSOs have been instrumental in ongoing efforts, such as the advocacy for the 5 Gender Bill rejected by the National Assembly in 2022. Collaborative efforts by CSOs including USAID, the Women Advocates Research and Documentation Center (WARDC), the National Coalition on Affirmative Action (NCAA), the Gender and Constitution Reform Network (GCRN), SAGE, and Gender Mobile, are geared towards championing the enactment of these bills in the 10th assembly to foster an inclusive and equitable society. Furthermore, CSOs were crucial in the successful passage of the National Health Act of 2014. Additionally, CSOs actively opposed the Senate's bill on Protection from Internet Falsehood and Manipulations, commonly known as the Anti-social Media Bill, expressing concerns regarding threats to freedom of speech. During the CAMA 2020 amendment in 2022, CSOs were essential stakeholders, advocating for a review of provisions that could adversely impact their operations and independence.

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<sup>50</sup> Samson Itodo, 'Not Too Young to Run; A Story of People, Power and Democratic Renewal,' *The Cable*, (June 04 2018). <<https://www.thecable.ng/not-young-run-story-people-power-democratic-renewal>> accessed 19<sup>th</sup> January 2024.

Civil society Organisations like PLAC play a crucial role in monitoring legislative processes and fostering public understanding of the National Assembly's function and significance. By establishing the civil society liaison office, PLAC has effectively created a network for engagement between civil society organisations and the National Assembly. PLAC collaborates with the Nigerian legislature to enhance its interaction with citizens and civil society groups, thus ensuring responsiveness to constituents' needs and public demands. Additionally, PLAC works to improve the legislature's effectiveness. For instance, in collaboration with the Joint Committee on Electoral Matters of the 9th National Assembly, PLAC organised a Special Hearing on the Implementation of the Electoral Act, in 2023. Furthermore, in partnership with the House of Representatives Special Committee on Legislative Agenda and with backing from FCDO, PLAC also organised a stakeholders' Town Hall Meeting in 2023 centred on the Legislative Agenda of the 10th House of Representatives.<sup>51</sup>

Lastly, Legislative oversight remains one of the areas where the Nigerian legislature exhibits weakness and inefficiency. Budget monitoring stands out as a crucial aspect of legislative oversight for the Nigerian legislature and CSOs have advocated for increased engagement in monitoring government spending, enhancing transparency and accountability. They engage in the entire budget process, from formulating and scrutinising proposed budgets to monitoring approval, tracking implementation, and post-implementation scrutiny by the legislature. In 2018, CSOs, with support from The Partnership to Engage, Reform, and Learn (PERL), developed a budget tracking template for citizen groups to monitor budgets. The National Assembly (NASS) can then utilise the generated reports in their oversight responsibilities.<sup>52</sup> Notable CSOs like

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<sup>51</sup> (n4)

<sup>52</sup> Ibid.



BudgIT and Connected Development (CODE) have contributed significantly through initiatives such as Follow the Money, scrutinising and tracking budget implementation.

The researcher observes that despite the potential contribution of CSOs to Legislative oversight, there are existing gaps. In Nigeria, CSOs have limited impact and influence in the budgeting and fiscal processes and play little or no direct collaborative role in the scrutiny and reform of legislation which underscores the lack of formal collaboration between CSOs and the National Assembly during the post-legislation stage, specifically in PLS.

## **2.4 Literature Review**

Post Legislative scrutiny, even though an evolving concept has gained notable recognition by scholars in recent years. Their work underscores the importance of ensuring the effective implementation of laws and their alignment with evolving societal needs. Since its inception, PLS has become a prominent feature in several legislatures around the world.

It is essential to state that the majority of literature in this area is foreign and non-Nigerian as post-legislative scrutiny is yet to be in existence formally in Nigeria and as such it has received very little scholarly consideration in Nigeria. Nigerian literatures predominantly focus on legislative drafting procedures and legislative processes, without referring to post-legislative scrutiny. However, Christopher D. O's,<sup>53</sup> stands out as a notable Nigerian contribution, extensively examining post-legislative scrutiny. He argues that even well-drafted legislation loses effectiveness over time due to changing circumstances. To address this, he advocates for post-legislative scrutiny to fix contradictions, inconsistencies, and unintended consequences, thereby enhancing the overall effectiveness of laws.

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<sup>53</sup> Christopher Debakeme Ogbu, *'Post Legislative Scrutiny as A Mechanism for Effective Legislation'* (LLM Dissertation, The National Institute For Legislative And Democratic Studies/ University Of Benin 2021).

He recommends establishing joint committees of the Senate and House of Representatives or leveraging the National Institute for Legislative and Democratic Studies (NILDS) for this purpose. Christopher recommends inserting review clauses in legislation to trigger post-legislative scrutiny and suggests requiring ministers to submit implementation memoranda within specified time frames for legislation relevant to their areas of operation.

However, his paper does not address the need to involve citizens and access citizen's data, perspectives, experiences, and feedback in the post-legislative scrutiny process. It also lacks guidance on how legislative committees or bodies can gather and evaluate such information, thereby disconnecting citizens from the post-legislative scrutiny process.

In their paper, "An Appraisal of Post-Legislative Scrutiny Mechanisms in Nigeria: A Comparative Study of Nigeria and the United States of America," Mohammed Onyilokwu Amali and Bonnievolò Eson Ecoma,<sup>54</sup> compare post-legislative scrutiny (PLS) in Nigeria and the U.S. They find that while neither country explicitly defines PLS, the U.S. has structures that align with PLS principles, ensuring laws are properly implemented and continuously evaluated.

The authors identify triggers for legislative amendments, such as public outcry, policy shifts, media influence, and judicial recommendations. They note that PLS in Nigeria is often hindered by executive interference, internal conflicts, and legislative inexperience. They identify PLS mechanisms in the US to include legislative oversight, review clauses, sunset clauses, performance evaluations, and periodic executive reports. They recommend that Nigeria needs a tailored PLS approach for effective law implementation.

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<sup>54</sup> Mohammed Onyilokwu Amali and Bonnievolò Eson Ecoma, 'An Appraisal of Post-Legislative Scrutiny Mechanisms in Nigeria: A Comparative Study of Nigeria and the United States of America,' *UBLJ*, [2023], vol. 22, no. 1, pp. 1-33.

However, while their work is commendable in its attempt to institutionalise PLS within Nigeria, it largely overlooks the role of civil society and public participation in the process. Although they note public outcry as a trigger, they do not discuss CSOs or public engagement in actual law scrutiny, nor how their increased involvement could enhance transparency, inclusiveness, and effectiveness. Additionally, the reliance on legislative and executive branches in both countries' PLS processes is highlighted, without considering the potential contributions of independent, people-centred actors to improve inclusiveness and accountability.

In exploring regional literature, particularly in Africa, it's evident that akin to Nigeria, many African nations are just starting to consider the adoption of Post-Legislative Scrutiny within their parliament. Consequently, there's a dearth of African literature on this subject. The Gambia Parliament,<sup>55</sup> in its publication titled "Post-Legislative Scrutiny as a Tool for National Assembly Evaluation of the Laws of the Gambia," elucidates how the National Assembly can integrate PLS into its oversight functions to oversee implementation and enhance the quality of legislation. This publication offers insights into the concept of PLS through a comparative lens. The findings underscore PLS as a mechanism enabling Parliaments to actively monitor the implementation of laws enacted by it by way of soliciting feedback from citizens whom the laws are meant to benefit. Drawing from practices in other jurisdictions, the Parliament provided recommendations on how The Gambia can conduct PLS:

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<sup>55</sup> The Parliamentarian, 'Post-Legislative Scrutiny as a Tool for National Assembly Evaluation of the Laws of the Gambia', *Parliamentary learning from networks across the Commonwealth* [2023], Issue 2. <<https://issuu.com/theparliamentarian/docs/parl2023iss2finalonlinesingle/s/25901125> > Accessed 14th February 2024.

1. The National Assembly could improve oversight by requiring government agencies to regularly report on laws in effect for 3-5 years, facilitated by Committees, and support organisations like CSOs can develop through a standardised template.
2. The National Assembly could engage in outsourcing research to institutions for unbiased evaluations, alleviating capacity constraints.
3. Parliament could undertake its inquiries through public hearings, evidence gathering, and in-house research, potentially establishing dedicated Committees for oversight or incorporating it into existing mandates.

While the Parliament recognises PLS as a means of soliciting citizen feedback for monitoring law implementation and proposes avenues like public hearings and evidence collection, it doesn't offer explicit guidance on sourcing such feedback. Additionally, though it mentions collaboration with CSOs to develop expert tools like templates or scorecards for feedback provision, it confines their role in providing technical support rather than considering them as potential co-actors or primary actors in the PLS process.

In the international landscape one of the foremost notable literature in this field is the report published by the Constitution Committee of the House of Lords, led by Philip Norton in 2004, titled "Parliament and the Legislative Process".<sup>56</sup> Unlike earlier reports, such as the Hansard Society's 1990 report, this study took a comprehensive approach, addressing both pre- and post-legislative scrutiny. It recommended routine post-legislative scrutiny as part of parliamentary oversight.

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<sup>56</sup> House Of Lords Select Committee on the Constitution, 'Parliament and the Legislative Process' *HL Paper 173-I* (2004), Vol I Report, 14th Report, Session 2003-04, <<https://publications.parliament.uk/pa/ld200304/ldselect/ldconst/173/173.pdf>> accessed 14th February 2024.

The Law Reform Commission built on this recommendation in its 2006 report "Post-Legislative Scrutiny,"<sup>57</sup> proposing the establishment of a joint committee for post-legislative review. The report highlighted that despite rigorous drafting and scrutiny, legislation often faces implementation challenges, underscoring the need for systematic post-legislative scrutiny. The UK Law Commission outlined four main reasons for this scrutiny: evaluating legislative outcomes, improving policy implementation, learning from legislative successes and failures, and preventing adverse effects on rights, the environment, and welfare. This recommendation even though not adopted influenced the current practice of PLS in the UK, when 2008 governments mandated that government departments conduct systematic reviews of legislation within three to five years of enactment. Findings are submitted to departmental select committees in the House of Commons. The House of Lords, however, adopted a more structured approach, appointing ad hoc committees annually for specific reviews.

While these reports underscore the importance of systematic post-legislative scrutiny and recommended the creation of joint committees and routine government department reviews, there is no mention of how these proposed systems would take into consideration citizens' perspectives, experiences, and feedback in the scrutiny process. Although the reports emphasise the need to prevent adverse effects of legislation on fundamental rights, the environment, and social welfare, they rely primarily on memorandums and reports issued to special committees by government departments in the House of Lords, potentially overlooking crucial aspects of legislation's impact on citizens.

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<sup>57</sup> The Law Commission 'Post-Legislative Scrutiny' *Law Com No 302* (2006) Consultation Paper No 178. <<https://lawcom.gov.uk/project/post-legislative-scrutiny/>> accessed 14th February 2024.

Lord Norton of Louth<sup>58</sup> posits that post-legislative scrutiny has gained international recognition, partly due to the efforts of the Westminster Foundation for Democracy (WFD), with various national legislatures adopting some form of post-legislative scrutiny or oversight. The WFD has been particularly active in leading scholarly efforts in this area.

Franklin De Vrieze associated with the WFD, in his co-written book with Philip Norton<sup>59</sup> titled "Parliaments and Post-Legislative Scrutiny," explores the crucial role legislative bodies play in assessing the implementation and effectiveness of laws after their enactment, differentiating it from traditional legislative oversight. They compare PLS practices across various parliamentary systems, including those in Europe, the United Kingdom, and Canada, highlighting diverse approaches and the factors influencing their effectiveness, examining formal mechanisms like dedicated committees and informal practices such as stakeholder consultations. Their research identifies effective institutional arrangements and best practices, such as providing adequate resources for committees, fostering a culture of evaluation, and promoting stakeholder engagement. They emphasise the integration of PLS into the legislative cycle and the use of data and evidence in evaluating legislation.

While recognising informal practices such as stakeholder consultations, the book largely focuses on parliamentary engagement in PLS, with insufficient attention given to citizen involvement and the role of Civil Society Organisations (CSOs). Given the growing importance of CSOs in promoting transparency, accountability, and citizen engagement in legislative processes there is a need to explore how CSOs can complement parliamentary efforts, provide valuable insights, and enhance the accountability and effectiveness of post-legislative scrutiny mechanisms.

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<sup>58</sup> (n14).

<sup>59</sup> Ibid

Furthermore, Franklin De Vrieze and Philip Norton<sup>60</sup> in their paper “The significance of post-legislative scrutiny” highlight two key dimensions of PLS which include:

1. evaluating the technical implementation and enforcement of legislation;
2. assessing its alignment with intended policy outcomes and overall impact.

They argue that by addressing both dimensions, post-legislative scrutiny facilitates continual improvement in both the law itself and its implementation, thereby enhancing governance effectiveness and accountability. De Vrieze & Norton further contends that the effectiveness of post-legislative scrutiny is dependent on specific parliamentary procedures and structures dedicated to it, as well as the production of written reports and recommendations, along with monitoring and follow-up activities.

They observed that the approach to post-legislative scrutiny varies among nations, influenced by different interpretations. Some nations adopt a legalistic approach involving various bodies like government officials or independent agencies, while others prefer an evaluative or political method led by legislative committees. Parliaments may assign PLS to dedicated committees or integrate them into thematic committees. Notably, they recognise governments, their agencies or bodies as co-actors in the PLS process as parliament relies on them for information and data on legislative implementation<sup>61</sup>

It is imperative to highlight that within this paper, Frank appears to leave the responsibility of implementing and assessing the impact of legislation solely to government and executive agencies or bodies. He posits that these bodies hold most of the information on the impact of legislation, supported by institutions such as the Statistical Office in terms of empirical data

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<sup>60</sup> (n14).

<sup>61</sup> Ibid.

acquisition and the National Audit Office or Supreme Audit Institution through a performance audit. However, relying solely on the same categories of bodies (Executive) for implementation and impact assessment could lead to biased outcomes, akin to allowing the executive to be a judge in its case ("Nemo Judex in causa sua"). Governments may prioritise their work, avoiding acknowledgement of failures or negative impacts; providing minimal insight into how their approaches adversely affect citizens. Therefore, it is essential to explore additional independent and beneficiary-driven sources to obtain comprehensive reports on the true impact of laws.

Franklin De Vrieze and Victoria Hasson's<sup>62</sup> paper, "Post-Legislative Scrutiny: Comparative Study of Practices in Selected Parliaments and the Rationale for Its Place in Democracy Assistance," provides an in-depth analysis of post-legislative scrutiny (PLS) across various parliamentary systems. It highlights the importance of PLS in enhancing accountability, transparency, and legislative effectiveness in democracies.

The study compares PLS practices in different parliaments, examining how these institutions assess the implementation and impact of legislation. By analysing diverse case studies, the authors identify best practices and areas needing improvement, emphasising PLS's role in ensuring legislative accountability and evidence-based policy evaluation. PLS is shown to bridge gaps between legislative intent and outcomes, thereby reinforcing the legislative process and public trust in government.

However, the paper lacks a thorough discussion on the role of external actors in supporting PLS initiatives and mainly focuses on data from parliamentary and executive institutions. It does not

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<sup>62</sup> (n9).



explore how including perspectives from civil society organisations and citizens directly affected by legislation could provide a more holistic understanding of the subject matter.

Dr. Tom Caygill,<sup>63</sup> in his research on "Post-legislative scrutiny in the UK Parliament," aligns his thoughts with reports of the Law Reform Commission 2006, where he suggests that both the House of Commons and House of Lords should explore establishing either a Joint Committee or a dedicated committee to oversee systematic post-legislative scrutiny (PLS). He expands on this, recommending that this committee, whether joint or sessional, should be tasked with holding the government accountable for publishing memoranda and could delegate PLS responsibilities to sub-committees focused on specific acts and follow up on their reports to maximise impact.

Caygill also recommended the creation of a central repository for PLS memoranda accessible to both houses and committees involved in PLS, facilitating coordination and broader inquiry coverage. Additionally, he proposed making this repository publicly available to enable external bodies to scrutinise its contents and contribute their memoranda, thereby assisting committees in determining the necessity of PLS independently of government memoranda.<sup>64</sup> Consequently, Caygill acknowledges the need for the involvement of other bodies in the PLS process and consideration of diverse sources of information to ensure the objective assessment of legislation effectiveness. Parliamentary Innovation Publication titled "Seven Questions on Post Legislative Scrutiny" in supporting this stated that Committees should aim to gather information from a varied range of sources to avoid incomplete or biased conclusions.

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<sup>63</sup> (n16).

<sup>64</sup> Ibid.

Frank De Vrieze and Maria Mousmouti,<sup>65</sup> in their publication titled ‘Parliamentary Innovation through Post-Legislative Scrutiny; Manual for Parliaments’ provided practical guidance to parliament on how to effectively conduct post-legislative scrutiny. It outlines a systematic approach to PLS, detailing various stages including planning, data collection, analysis, and reporting. Notably, they highlighted the role of evidence-based assessment and stakeholder engagement in the process, underscoring the critical role of CSOs in Post-legislative scrutiny; particularly in providing independent evaluations, mobilising public opinion, and holding the government accountable. It highlights how CSOs can collaborate with parliamentary committees to ensure to enhancement of effective PLS. Notably, this work even though minimally, acknowledges that despite CSOs' and citizens' potential to enhance PLS effectiveness their perspectives are often forgotten and underutilised.

Furthermore, Franklin De Vrieze,<sup>66</sup> in the Westminster Foundation for Democracy (WFD) publication on "Post-Legislative Scrutiny in the Americas," acknowledges the need for civil society organisations (CSOs) involvement in effective post-legislative scrutiny (PLS). He suggests that for PLS to be effective, there must be complete and timely access to government information, with input from various stakeholders including CSOs. De Vrieze suggests the establishment of mechanisms and opportunities to facilitate access to CSO views and information, highlighting the value of public consultations in gathering diverse perspectives and enhancing citizen confidence in democratic institutions. Through this contribution, he

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<sup>65</sup> Frank De Vrieze and Maria Mousmouti, ‘Parliamentary Innovation through Post-Legislative Scrutiny; Manual for Parliaments’ *Westminster Foundation for Democracy* (2023). < <https://www.wfd.org/what-we-do/resources/parliamentary-innovation-through-post-legislative-scrutiny>> accessed 2th January 2024.

<sup>66</sup> Quito, Ecuador, ‘Post legislative Control in the Americas’ *ParlAmericas-WFD seminar on Post-Legislative Control*, (2019). <<https://www.wfd.org/what-we-do/resources/comparative-study-pls-americas>> accessed 15th February 2024.

underscores the necessity for parliament to consider alternative sources of information, particularly from CSOs, to enhance the effectiveness of PLS processes.

Grazia Careccia and Alicia Wallace,<sup>67</sup> in their publication for the Westminster Foundation for Democracy titled "Post-Legislative Scrutiny: Shifting from a Parliamentary Model to a Strategic and Operational Tool for Civil Society Organisations," emphasised CSOs significant role in democratic governance, particularly in advocating for communities. They contend that CSOs can actively participate in PLS by either monitoring processes initiated by governmental bodies or conducting their assessments, thereby offering their unique perspectives on the impact of legislation.

Careccia and Wallace underscore that CSOs, being closely connected to community members, possess valuable insights into the real-world effects of laws and can leverage their knowledge and experience to enhance legislation for the benefit of society. This paper provides step-by-step guides tailored to LGBTIQ+ organisations, enabling them to independently assess laws' effects on their communities.

While acknowledging CSOs' engagement in post-legislative scrutiny; this publication primarily focuses on guiding CSOs to conduct independent scrutiny of laws to ascertain how it has impacted their demography of interest rather than facilitating direct link or engagement with parliament in the PLS process. This limitation undermines CSOs' potential impact and role in the parliamentary-led post-legislative scrutiny process.

Bhutan's Parliament,<sup>68</sup> in its strategic document titled "Parliament and Civil Society Organisations- a Strategy Document," emphasised the important role of Civil Society Organisations (CSOs) in supplementing governmental efforts across various domains. The

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<sup>67</sup>(n1).

<sup>68</sup> (n6).

document emphasises that the core functions of parliament include legislation, representation, and oversight, while CSOs complement these functions by representing diverse societal segments, advocating for their interests, and serving as global watchdogs. Recognising the constraints of its structures, the Bhutan parliament sees collaboration with CSOs as mutually beneficial, offering complementary forums for representation.

The strategy document underscores the importance of integrating CSOs into the legislative process, recognising that based on the role CSOs play in society they are strategically positioned to access and provide relevant data parliament may need in its legislative process and provide parliament with technical expertise in carrying out its legislative function. It outlines mechanisms for Parliament-CSO collaboration in the legislative process to include roundtable discussions, committee meetings, public hearings, petitions, and annual Parliament-CSO meetings. While acknowledging the potential impact of CSOs and Parliamentary collaboration in the parliamentary process it makes no substantial reference to the area of Post Legislative Scrutiny.

Chidi Ochonma's<sup>69</sup> research paper, "Assessment of Civil Society Organisation - Legislature Partnership: A Case Study of the First and Second Sessions of the 9th National Assembly," examines the collaboration between Civil Society Organisations (CSOs) and the Nigerian legislature in the 9th Assembly. Ochonma highlights the roles of CSOs in promoting transparency, accountability, and inclusive law-making in democratic systems, through advocacy, capacity-building workshops, and providing expert insights.

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<sup>69</sup> Ochonma, Chidi, 'Assessment Of Civil Society Organisation - Legislature Partnership: A Case Study Of The First And Second Sessions Of The 9Th National Assembly', *NILDS Institutional Repository* (2021). <<https://ir.nilds.gov.ng/handle/123456789/947>> accessed 28th February 2024.

The paper outlines the formal and informal mechanisms of CSO engagement with the legislature, including public hearings, consultations, policy briefings, lobbying, and personal interactions with lawmakers. It also discusses challenges faced by CSOs, such as limited access to legislators, bureaucratic obstacles, and resistance from lawmakers. Ochonma emphasises the positive contributions of CSOs in shaping legislative agendas and outcomes, noting case studies where their interventions led to significant legislative changes. However, while Ochonma's research highlights CSOs' positive contributions to legislative agendas, it lacks an exploration of their involvement in post-legislative scrutiny (PLS) and reform of laws.

Seember Nyager's paper,<sup>70</sup> "CSOs Engagement with The Legislature: Best Practices for Inclusive Lawmaking," underscores the crucial role of civil society organisations (CSOs) in enhancing inclusive lawmaking and protecting human rights in Nigeria. His research is relevant as it points out that CSO involvement addresses gaps in public engagement within the legislative process, citing Section 14(2)(c) of the CFRN, which provides for public participation in governance. Further arguing that although this section falls within chapter II of the CFRN which is non-justifiable, its provisions can be relied upon as legitimate ground for citizen's participation in the law-making process. However, while this is commendable; this paper limits CSOs' or citizens' engagement to the pre-legislative and legislative stages, making no specific reference to their engagement in the scrutiny of laws at the post-legislative stage.

Chris Ifeanyi Adebawale, Ph.D & 2ATUFE-Musa, Enoho Violet,<sup>71</sup> also aligned their thought with this when they posit in their paper titled "The Role of Civil Society Organisations in

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<sup>70</sup>(n7).

<sup>71</sup> Chris I.A Ph.D & 2ATUFE-Musa, E.V, 'The Role of Civil Society Organisations (CSOs) in Deepening Democratic Tenets in Nigeria' *Gusau International Journal of Management and Social Sciences, Federal University, Gusau* [2021], Vol.4 No. 1. <<https://www.gijmss.com.ng/index.php/gijmss/article/download/42/38>> (accessed 18th February 2024).

Deepening Democratic Tenets in Nigeria”. They argue that CSOs act as a bridge between the public and private sectors, embodying representative democracy. CSOs help formulate and aggregate citizens' preferences, address collective action problems, secure representation, and drive policy change.

Moulds, S., & Khoo, Y. H<sup>72</sup> in their paper “The Role of the People in Post Legislative Scrutiny: Perspectives from Malaysia and Australia” argued for Parliament's consideration of citizen perspectives and feedback on law impacts in the PLS process. These scholars critique the current PLS approach, labelled as "Top-down," advocating for a shift towards a more "Bottom-up" and inclusive approach. They contend that the top-down approach overly prioritises state and executive policymakers as the main actors in the formulation and review of laws. They argue that this approach can be criticised for prioritising those in legislative and executive power while reducing opportunities for meaningful public engagement and deliberation in the legislative and post-legislative scrutiny processes.

They contend that a bottom-up approach, in contrast, encourages citizen participation aligning with principles of legal empowerment and social justice with the ultimate potential to enhance the legitimacy of parliamentary law-making and build public trust in political and law-making institutions. Emphasising community participation and grassroots mobilization, a bottom-up PLS approach underscores modern parliaments' broader responsibilities to engage with their constituents. Direct engagement with citizens throughout the PLS process can create conducive conditions for achieving PLS's goals. According to the WFD, under appropriate circumstances, PLS can act as a safeguard, upholding fundamental constitutional values like representative

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<sup>72</sup> Sarah Moulds & 2Ying Hooi Khoo, ‘The role of the people in post legislative scrutiny: Perspectives from Malaysia and Australia.’ *Journal of International Studies* [2020], Vol. 16, 1-23, <<https://e-journal.uum.edu.my/index.php/jis/article/view/jis2020.16.1/2761> > (accessed 18th February 2024).

democracy, legal certainty, and the rule of law, while also enhancing the quality and effectiveness of legislation and its implementation.<sup>73</sup>

However, the paper, despite advocating for greater citizen involvement through the adoption of a bottom-up approach to PLS, fails to address how legislators can effectively engage citizens in the PLS process. Without establishing a meaningful connection between the people and legislators, citizen participation in PLS remains a formidable challenge in practice.

### **2.4.1 Summary of the Gaps**

In summary, the literature on Post Legislative Scrutiny (PLS) has grown significantly, with scholars underscoring its importance in ensuring laws are effectively implemented and aligned with societal needs. These notable gaps persist, particularly in the context of Nigeria and the involvement of Civil Society Organisations (CSOs) in the PLS process.

Many scholars, including Amali and Ecoma, have examined PLS mechanisms in Nigeria and other countries, highlighting structural and procedural aspects. However, their work largely overlooks the role of CSOs and public participation. While acknowledging the importance of public engagement, they do not explore how CSOs can be systematically integrated into PLS to enhance transparency and effectiveness.

The Gambia Parliament and international reports, such as those by the House of Lords and the UK Law Commission, emphasise the need for systematic PLS. However, these reports do not provide clear guidance on how to incorporate citizen feedback into the scrutiny process. Although they advocate for mechanisms like public hearings and evidence collection, the specific methods for sourcing and evaluating citizen input are not well-defined.

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<sup>73</sup> Ibid.

Additionally, Scholars like Franklin De Vrieze and Dr. Tom Caygill have highlighted the importance of post-legislative scrutiny, emphasising the role of government departments and executive agencies. However, this reliance on the executive for information and assessments risks biased outcomes, as these bodies may not fully disclose the negative impacts of legislation. There is a need for independent and beneficiary-driven sources of information to ensure objective evaluations.

Moreso, while some scholars and publications recognise the potential of CSOs in monitoring and providing feedback on legislation, their role is often seen as supplementary rather than integral. For instance, Careccia and Wallace focus on CSOs conducting independent assessments rather than being directly involved in parliamentary-led PLS processes. This limits the potential impact of CSOs in influencing legislative improvements.

Despite the recognised importance of CSOs in representing diverse societal interests and providing valuable insights, there is a lack of structured frameworks for their involvement in PLS. Additionally, Bhutan's strategic document and Seember Nyager's research highlight the benefits of CSO engagement in legislative processes, majorly looking at the pr-legislative and legislative stages but do not specifically address post-legislative stages, leaving CSOs' potential to enhance legislative scrutiny underutilised.

Additionally, scholars advocating for a bottom-up approach, such as Moulds and Khoo, argue for greater citizen participation in PLS. However, they often fail to provide practical guidance on how legislators can effectively engage citizens in this process. The absence of concrete mechanisms for citizen involvement makes it challenging to implement these recommendations in practice.



This research extends the arguments put forth by these scholars, aligning primarily with the perspectives associated with moving from a ‘top-down’ to a more ‘bottom-up’ approach to PLS, emphasising the necessity for a more effective and inclusive PLS approach. This research expands upon the work of these scholars by advocating for increased collaboration between CSOs and the legislature specifically in the realm of PLS, and points out how CSOs can leverage their strategic position in society to address some of the deficiencies inherent in current PLS practices and approach.

## **CHAPTER THREE**

### **LEGAL AND INSTITUTIONAL FRAMEWORK FOR POST-LEGISLATIVE SCRUTINY IN NIGERIA**

This chapter explores the legal and institutional framework for post-legislative scrutiny (PLS) in Nigeria. It critically examines the relevant legal frameworks, including the 1999 Constitution of The Federal Republic of Nigeria (as altered), the Standing Orders of the House of Representatives (2014) and the Senate Standing Orders, 2011 (as altered), and the Public Hearing Manual of the House of Representatives (2019). The chapter also discusses the institutional frameworks, focusing on the National Assembly, the Nigerian Law Reform Commission, and the Nigerian Judiciary. Lastly, it examines the current practice of PLS in Nigeria, evaluating its effectiveness and the factors influencing PLS practice in Nigeria.

#### **3.1 Legal Framework for Post-Legislative Scrutiny in Nigeria**

In countries such as the UK, Scotland, Belgium, Lebanon, and Indonesia, where post-legislative scrutiny is formally practised, the parliament leads the process through formally established structures and mechanisms usually in the form of committees; whether thematic, sessional, special inquiry or dedicated committees. This practice, as identified earlier in our research, is grounded on the belief that since the parliament is responsible for enacting laws, it should also take the responsibility of overseeing the implementation and assessing the impact of these laws.

In the Nigerian context, the role of the legislature in conducting post-legislative scrutiny primarily falls within its legislative oversight function and its authority to repeal and amend laws as provided for by the constitution, rules and various standing orders of the House which we shall discuss below. Professor Sulaiman Abubakar, the Director-General of NILDS alluded to

this when he stated that PLS is taking root as an integral component of parliamentary oversight in the country.<sup>74</sup>

### **3.1.1 1999 Constitution of The Federal Republic of Nigeria (As altered)**

The Nigerian governance system consists of three branches namely; the Legislature, the Executive, and the Judiciary. The Legislature is tasked with creating laws, the Executive is responsible for implementing and enforcing these laws, and the Judiciary interprets them. Each branch has distinct responsibilities and must work together to ensure effective governance, peace, and development of the country.

By virtue of Section 4 of the 1999 CRFN, the legislative powers of the country are vested in the National Assembly, which consists of the House of Representatives and the Senate. This authority enables the National Assembly to enact laws for the peace, order, and good governance of the Federation on matters listed in the Exclusive Legislative List and the Concurrent List (a list of 12 items that both the National Assembly and State Houses of Assembly can legislate on). The legislative power to make laws also includes the authority to amend or revoke laws they have drafted, or that have been drafted by a delegated body, to ensure these laws are effective and meet their intended objectives at all times. This was affirmed in the case of **Adesaya v. Adewole**,<sup>75</sup> where the court stated that the constitutional function of the legislature to make laws includes amendment and revocation.

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<sup>74</sup> Samson Atekojo Usman, 'CNA, NILDS insists on impactful laws as critical to nation-building' *Daily post* (March 10, 2022). <<https://dailypost.ng/2022/03/10/cna-nilds-insists-on-impactful-laws-as-critical-to-nation-building/>> accessed 20<sup>th</sup> January 2024.

<sup>75</sup> [2019] LCN/12732(CA).

The 1999 Constitution of the Federal Republic of Nigeria (CFRN) expands the role of the legislature to include oversight functions. Legislative oversight is the constitutional authority granted to the legislature to review, monitor, and supervise the exercise of constitutional powers by other branches of government. More specifically, it involves checking or controlling the exercise of executive powers to ensure that the executive is accountable and responsible to the electorate. Section 88 (1) of the CFRN states:

1. Subject to the provisions of this Constitution, each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed investigation into:
  - a) any matter or thing concerning which it has the 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 or responsibility for:
    - i. executing or administering laws enacted by the National Assembly, and
    - ii. disbursing or administering monies appropriated or to be appropriated by the National Assembly.

The legislative oversight is rooted in the theory of Separation of Powers and the principle of Checks and balances as compounded by the French political philosopher Charles Montesquieu. The legislature is constitutionally responsible for creating laws and approving budgets to ensure the availability of necessary funds to ensure these laws come into force. While the executive is tasked with implementing the laws made by the legislature. The power of oversight as provided in section 88 CFRN allows the legislature to monitor the Executive actions and policies, ensuring laws are implemented according to legislative intent and maintaining accountability and transparency in the disbursement of approved funds.

To this end, the Policy and Legal Advocacy Center (PLAC) defines oversight as the ongoing process by which a legislative body monitors, scrutinises, reviews, and evaluates the performance of the executive branch of government or its agencies to ensure effectiveness, efficiency, and good performance. This definition aligns with Oyewo's more detailed description of oversight as “the exercise of constitutional powers by the legislature to check or control the exercise of constitutional powers by other branches of government, specifically to regulate executive powers and ensure the executive is accountable and responsible to the electorate.”<sup>76</sup>

Furthermore, Section 88 (2) (a) & (b) of the Constitution of the Federal Republic of Nigeria grants the legislature oversight authority to conduct investigations, summon relevant individuals, and gather evidence. This is to enable the legislature to make and review laws, correct any defects in existing laws, and uncover any corruption, inefficiency, or waste in the execution or administration of laws and the disbursement or management of appropriated funds. Sec 88 (2) (a) & (b) provide thus:

- 1) The powers conferred on the National Assembly under the provisions of this section are exercisable only to enable it to:
- 2) make laws concerning any matter within its legislative competence and correct any defects in existing laws; and
- 3) 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.<sup>77</sup>

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<sup>76</sup> Policy and Legal Advocacy Centre (PLAC), ‘Guide To Legislative Oversight in The National Assembly Final Purple’, PLAC (2016), < <https://www.scribd.com/document/589544078/Guide-to-Legislative-Oversight-in-The-National-Assembly-Final-Purple-1> > accessed 24th January, 2024.

<sup>77</sup> Ibid.

The foregoing 1999 Constitutional empowers the National Assembly to subject any laws enacted by it within its legislative competence to a form of post-legislative scrutiny to determine whether the laws have been brought into force by the relevant executive body and to assess the impact and effectiveness of the law in meeting its intended objective, which would then inform the legislature to either amend or repeal the law where necessary to ensure that laws at all-time are relevant, effective and intone with current sociolect-economic, political, technological and other societal demands.

### **3.1.2 Standing Orders Of The House Of Representatives, 2016 and The Senate Standing Orders 2015 (As Amended)**

The conduct of oversight is also legalised by the various Standing Orders of both chambers of the National Assembly. Section 60 of the 1999 Constitution (as Amended) grants the National Assembly the power to regulate its procedures, including those for summoning sessions and recesses. Additionally, the Rules specify the jurisdiction of all Special and Standing Committees over legislative activities, including the oversight of Ministries, Departments, or Agencies under the jurisdiction of a particular committee, in accordance with section 62 CFRN 1999. This framework ensures that the legislature upholds principles of good governance and remains responsive, transparent, and accountable to the electorate.<sup>78</sup>

The Senate Standing Orders 2015, Rule 102 (1) (As Amended) provides that:

In the exercise of the powers conferred on the National Assembly by Sections 88 and 89 of the Constitution of the Federal Republic of Nigeria, the Senate shall have the power to direct or cause to be directed an investigation into any matter.

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<sup>78</sup> Ibid.

In this line Order XVIII of the Standing Orders of the House of Representatives, 2016 also makes provisions for this type of oversight. This standing Orders of legislatures empowers committees to engage in oversight which extends to subjecting any laws enacted by it to oversight to correct any defects in existing laws in line with the 1999 CFRN.

### **3.1.3 Public Hearing Manual House Of Representatives National Assembly, 2019**

The Public Hearing Manual of the House of Representatives in the National Assembly of Nigeria provides a structured framework for conducting public hearings as part of the legislative process. It states the procedure for conducting a public hearing by the House of Representatives is divided into pre-hearing activities, the day of the hearing, and post-hearing activities. This manual aims to enhance transparency, ensure public participation, and improve the overall effectiveness and efficiency of the legislative process.

Furthermore, it defines a public hearing as a specialised session organised and led by House Committees to gather and assess pertinent information, expert insights, and public feedback on proposed laws, regulations, or policy matters related to governance. It emphasises that public hearings serve as a mechanism through which the House of Representatives scrutinises and investigates the exercise of executive powers, including the operations of government ministries, departments, and agencies (MDAs).

The manual was designed for Legislators in the House of Representatives of the Federal Republic of Nigeria, specifically for House committees, and honourable members, including the relevant legislative officers of the House of Representatives. This manual outlines four types of hearings namely: investigative hearings, legislative hearings, oversight hearings, and quasi-judicial hearings.

### **3.1.4 Nigerian Law Reform Commission Act, 2022**

The Nigerian Law Reform Commission Act, 2022, came into effect on April 6, 2022, following Presidential Assent. This Act repealed the Nigerian Law Reform Commission Act, 1979, Laws of the Federation of Nigeria (LFN), 2004. Section 1 of the 2022 Act established the Nigerian Law Reform Commission to support the National Assembly's efforts in regularly updating and developing legislation to align with current socio-economic and political realities.

Section 5(1) of the Nigerian Law Reform Commission (Amendment) Act 2022 outlines the Commission's functions thus:

Subject to the provisions of this section, the Commission shall generally research, take, and keep under review all Federal laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of Nigerian society including, in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with changes in the machinery of the administration of justice and generally the simplification and modernisation of the law.

Additionally, the Amended Act of 2022 broadens the Commission's functions to include providing training on law reform and related matters for a fee, as well as conducting public enlightenment programs on law reform activities.



## **3.2 Institutional Framework for Post-Legislative Scrutiny in Nigeria**

### **3.2.1 National Assembly**

The National Assembly of the Federal Republic of Nigeria is vested with the authority to create laws for the country. It is a bicameral legislature established under Section 4 of the Nigerian Constitution, consisting of the House of Representatives (also known as the Lower or Green Chamber), led by the Speaker and the Deputy Speaker, and the Senate (also known as the Upper or Red Chamber), led by the President of the Senate and the Deputy President. According to Sections 47-49 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN), ‘There shall be a National Assembly (NASS) for the federation which shall consist of two chambers: the Senate and the House of Representatives.’ The Senate is composed of 109 members, and the House of Representatives consists of 360 members. The Nigerian National Assembly is modelled after the United States Congress, ensuring equal representation with three senators from each of the 36 states, plus one senator representing the Federal Capital Territory. The House of Representatives uses single-member district plurality voting to represent the 360 Federal Constituencies, which are allocated based on population.<sup>79</sup>

As the highest legislative body in the country, the National Assembly holds the constitutional authority to enact laws for the peace, order, and good governance of the Federation. It is also tasked with representing the interests, aspirations, and well-being of the citizens. Additionally, the National Assembly is responsible for scrutinising public institutions and officials to ensure accountability and transparency in implementing the laws it drafts and in the use of government funds, it approves.

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<sup>79</sup> Official Website of the National Assembly, < <https://nass.gov.ng/about/item/9>> accessed 23<sup>rd</sup> January 2024.

According to Section 62 (1) of the Constitution of the Federal Republic of Nigeria (1999), the Senate and the House of Representatives are empowered to appoint Committees for special and general purposes, known as Special or Ad Hoc committees and Standing Committees, as deemed necessary. Members of the Senate and House of Representatives are assigned to various Committees to facilitate their legislative responsibilities.<sup>80</sup> These Committees conduct legislative tasks on behalf of their respective chambers and report their findings and recommendations to the entire house for final decisions. The House uses these committees to perform its oversight functions. The institutional framework for Public Legislative Scrutiny (PLS) is grounded in the National Assembly's committee oversight function.

### **3.2.1.1 Committees System in the National Assembly**

Legislatures rely on committees to manage their affairs; these committees are small groups of legislators assigned, either temporarily or permanently, to scrutinise issues more thoroughly than the entire chamber can. Section 62 of the Constitution of the Federal Republic of Nigeria (CFRN) authorises the National Assembly to establish various committees for oversight. It states:

62 (1) The Senate or the House of Representatives may appoint a committee of its members for such special or general purpose as in its opinion would be better regulated and managed using such a committee, and may by resolution, regulation, or otherwise, as it thinks fit, delegate any functions exercisable by it to any such committee.

The committees in the National Assembly are generally categorised into four types:

1. Standing Committees;

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<sup>80</sup> Ibid.

2. Special Committees or Ad-hoc (select) Committees;
3. Joint Committees; and
4. The committee of the whole.

These committees, empowered by the standing orders of both houses, conduct oversight and handle responsibilities as specified by the Senate 2015, Chapter XIII (Orders 95-98) and the House of Representatives Standing Orders 2016 (Orders XVII and XVIII), and Section 62 of the 1999 Constitution (as amended). The standing rules define the composition and functions of standing, ad-hoc, joint and special committees. At the same time, Section 62(3) of the CFRN mandates appointing a Joint Committee of Finance and allows for other joint committees, this section specifies:

‘The Senate and the House of Representatives shall appoint a Joint Committee of Finance consisting of an equal number of persons appointed by each House and may appoint any other joint committee under the provision of this section’.

Ad-hoc committees have a defined jurisdiction upon establishment and cease to exist once their specific purpose is fulfilled. Examples are the 9th Assembly’s Committee on the Petroleum Industry Bill and the Committee to Probe the Central Bank of Nigeria’s Anchor Borrowers, Ways, and Means. The jurisdiction of Ad-hoc committees determines whether they possess investigatory power and outlines the specific matter for which they are formed.<sup>81</sup> Special committees, unlike ad-hoc committees, are formed for the term of the National Assembly and their role is to facilitate the legislative process and assist in the smooth conduct of business

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<sup>81</sup> National Institute for Legislative Studies, National Assembly, ‘Legislative Oversight Manual’, *NILDS Institutional Repository* (2015) <[https://www.nilds.gov.ng/wp-content/uploads/2022/10/oversight\\_manual.pdf](https://www.nilds.gov.ng/wp-content/uploads/2022/10/oversight_manual.pdf)> accessed 24<sup>th</sup> January 2024.

example the Rules and Business, Selection and Senate Service Committees of the 10<sup>th</sup> Assembly.<sup>82</sup>

Standing committees, in contrast, operate throughout the Assembly's lifespan and are created based on different thematic/policy areas like education, petroleum, agriculture, technology etc. These committees exist in both the Senate and the House of Representatives and derive their jurisdiction from the constitution and standing orders of both houses. Joint committees are composed of members from both the House and Senate to address issues requiring collaboration between both chambers, like constitutional review and national security. Lastly, the Committee of the Whole House is a session where all members meet as one large committee to consider detailed aspects of proposed legislation which allows them to debate and amend bills in detail before final passage.<sup>83</sup>

### **3.2.1.2 Functions of Legislative Committees**

According to the National Democratic Institute for International Affairs (NDI, 1996, p. 3),<sup>84</sup> legislative committees serve several key functions, including:

- a. Enabling the legislature to handle multiple critical tasks simultaneously, which might otherwise be neglected. These tasks include a detailed review of proposed legislation, oversight of the executive branch, examination and reporting on policy issues, and conducting special investigations.

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<sup>82</sup> Musa Aliyu, 'The Role Of Legislative Committees In Enhancing Legislative Performance In Nigeria: A Study Of The House Of Representatives', *NILDS Institutional Repository* (2021). <<https://ir.nilds.gov.ng/handle/123456789/947>> accessed 28th Febraury 2024.

<sup>83</sup>

<sup>84</sup> Ibid.

- b. Committees Operate within less formal procedural rules compared to the entire legislature (plenary or floor proceedings), committee sessions offer a platform for informal discussion among members. This fosters a collegial atmosphere where consensus on minor issues and technical enhancements in legislation can be swiftly reached.
- c. Committee members develop expertise in the areas under their committees' jurisdiction, earning recognition from their legislative peers, the media, and the public. Committee involvement serves as a pathway to establishing leadership within the legislature and gaining visibility in the public domain.
- d. Holding a public hearing that permits citizen and media attendance and educates the public on significant policy issues, the implications of proposals, and the democratic process. Open meetings help committees gain public understanding and support for the legislature's decisions.

### **3.2.1.2.1 Oversight Functions of Legislative Committees**

Legislative Committees are the mostly used tools for legislative oversight in Nigeria. In The case of Attorney General of Bendel State v. Attorney General of the Federation,<sup>85</sup> the court held that the purpose of legislative committees is to facilitate the carrying out of oversight functions of the legislature; the purpose of oversight functions being to ensure that Acts of the National Assembly are well implemented, including the Appropriation Act.

Committees in carrying its oversight function in exercise of the powers by the constitution and various standing order of the both houses.<sup>86</sup> The most common oversight tools adopted by these

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<sup>85</sup> (1982) 3 NLLR 1

<sup>86</sup> Sections 88 and 89 of the Constitution of the Federal Republic of Nigeria; Order XVIII of the Standing Orders of the House of Representatives, 2016 and Rule 102 (1) Senate Standing Orders 2016.

committees in discharging these duties are oversight visits, committee hearings (public/investigative), hearings in plenary sessions of the parliament, the creation of commissions of inquiry, questions, the public account committees, auditors general, interpolation and ombudsman.<sup>87</sup>

Legislative oversight can be classified into:

1. Routine oversight
2. Appropriation Oversight
3. Investigative Oversight
4. Public Accounts Committee Oversight

**Routine Oversight:** Conducted regularly by National Assembly committees to ensure MDAs comply with laws. It includes visits to MDAs, screening executive nominations, committee hearings, inquiries, and informal meetings between MPs and the executive.

**Appropriation Oversight:** Legislative power to scrutinize and approve the budget. The Appropriation Committee leads, with other standing committees as subcommittees for the purpose of consideration of the Appropriation Bill. This critical oversight subjects MDA estimates to thorough examination.

**Investigative Oversight:** The legislature investigates government agencies' activities at plenary or through standing or adhoc committees, depending on the resolution of the legislative House per Section 88 of the 1999 Constitution. The rational of investigative oversight is to enable the legislature:

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<sup>87</sup> PLAC

- a. Make laws on any matter within its legislative competence or correct defects in existing laws
- b. Expose corruption, inefficiency or waste in public expenditure management.

**Public Accounts Committee Oversight:** This special committee examines the Auditor General's reports on MDA accounts, as per Section 85 of the 1999 Constitution. It verifies issues through interactive sessions with MDAs and reports findings for plenary approval.

### **3.2.1.3 Types of Hearing**

In carrying out their duty the Legislative committees adopt hearings, meetings, consultations, and round table discussions. Under the Nigerian legislative practice the following types of hearings are identified in line with The Public Hearing Manual of the House of Representatives and the practice in the Senate of the National Assembly of Nigeria:

- a) Investigative hearing;
  - b) Legislative hearing;
  - c) Oversight hearing; and
  - d) Quasi -Judicial hearing.
- a) **Investigative Hearings:** These hearings investigate government agencies or officials following allegations of gross misconduct or abuse of power. Committees may subpoena or invite witnesses and summon public officials or representatives of Ministries, Departments, and Agencies (MDAs) to appear and provide evidence, in line with section 88 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN).
  - b) **Legislative Hearings:** These are typically conducted after the second reading of a bill, where the House refers to the bill for public input. Once the presiding officer puts the question, “This Bill be now read the second time,” and the clerk reads the bill's long title, the

bill is referred to a standing committee or a combination of committees. These committees then process the bill, deliberating what needs to be done so that a draft law can become law or whether a proposed law is necessary, this includes holding public hearings to gather stakeholder opinions. At the conclusion of the public hearing, the committee submits its report to the house for further deliberation before advancing to the third reading.

- c) **Oversight Hearings:** These hearings are mandated by Parliament to review specific actions of the executive branch or departments over which the committee has oversight. They focus on evaluating government programs and the performance of officials, examining the implementation of laws to ensure they align with legislative intent and public interest. Oversight hearings can expose corrupt practices, waste of approved funds, and weaknesses in laws or executive actions. Oversight hearings enable legislative committees to exercise their supervisory powers to ensure checks and balances across government branches.
- d) **Quasi-Judicial Hearings:** These formal hearings require the House to hold evidentiary sessions and make decisions based solely on the evidence presented. Unlike other legislative decisions, quasi-judicial decisions must be evidence-based and cannot rely on members' opinions. An example is impeachment proceedings. Decisions made in quasi-judicial hearings must follow proper procedures; otherwise, they can be overturned by a court of law.
- e) **Budget Hearing:** These hearings focus on the review and analysis of the national budget. They involve discussions on budget proposals, allocations, and expenditures to ensure they align with national priorities and policies. Budget hearings are conducted by all oversight committees, functioning as subcommittees of the Appropriation Committee for this purpose.



During these hearings, each committee invites the respective Ministers and their officials to publicly defend their budget proposals.

- f) **Confirmation Hearing:** Confirmation hearings are conducted by either the Senate or the State House of Assembly, typically assigning a committee to hold public hearings regarding nominees put forward by the President or State Governor. These hearings are intended to scrutinise and approve appointments made by the executive branch, evaluating the qualifications, suitability, and integrity of nominees for various public positions such as ministers, heads of agencies, and judges. For instance, an example includes the confirmation hearings held between July and August 2023 for ministerial nominees under President Bola Ahmed Tinubu's administration.

### **3.2.2 The Nigerian Law Reform Commission**

The Nigerian Law Reform Commission, established under the Nigerian Law Reform Commission Act of 2022, is an expert advisory body with the mandate and speciality to review various areas of law and recommend changes. Constituted by four full-time Commissioners serving a renewable five-year term, contingent upon Senate confirmation, one of whom assumes the role of Chairman.

The Commission operates autonomously from the government under section 3 of the aforementioned Act. Its autonomy ensures that the Commission's reform objectives remain uninfluenced by governmental perspectives or external interest groups. The creation of the Commission as a separate entity from the government is based on the belief that its independent thought process will lead to the development of more fair, just, and efficient laws. Furthermore,

the Commission's independence is rationalised by the advisory role it fulfils for both the Executive and the Legislature.<sup>88</sup>

The Commission, as outlined above, is tasked with reviewing all Federal laws to align with the prevailing norms of Nigerian society. This involves codifying laws, rectifying inconsistencies, repealing outdated or unnecessary statutes, consolidating enactments, and updating procedural laws to reflect changes in the justice system administration. Moreover, the Commission aims to simplify and modernise laws, ensuring they are contemporary, equitable, just, and efficient, thereby supporting the government's developmental goals and meeting the nation's international commitments. This is achieved through continual research and law analysis, as well as public consultation.

Among various approaches, the Commission may act upon proposals for law reform presented or referred by the Attorney-General of the Federation (AGF) or the National Assembly. It may also independently devise programs to scrutinise different areas of law for reform, submitting these proposals to the Attorney General and the National Assembly. Additionally, the Commission has the authority to review suggestions for State law reform of any states, groups of states, or all states in Nigeria, forwarding reports to respective State Attorneys General and State Houses of Assembly. Its responsibilities extend to providing fee-based training on law reform and related topics, as well as conducting public awareness initiatives on law reform endeavours.

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<sup>88</sup> Imarha, Reuben Oghenenyero, 'An Appraisal Of The Impact Of The Nigerian Law Reform Commission In The Legislative Process' *NILDS Institutional Repository* (2022-04). <https://ir.nilds.gov.ng/handle/123456789/1480> accessed 29th January 2024.

Furthermore, Federal Ministries, Departments, and Agencies may collaborate with the Commission on their law reform initiatives.<sup>89</sup>

The Commission identifies areas in urgent need of reform by pinpointing anomalies within the legal system and proposing reform measures. Once areas requiring reform are identified, the Commission conducts a comprehensive study, initially reviewing the provisions of the Constitution and other laws to assess their adequacy in the subject matter. This in-depth study involves research and consultations with a broad spectrum of stakeholders to gather diverse perspectives. Stakeholder consultations inform the creation of a Working Paper, distributed nationwide for study before discussions at a National Workshop. Key stakeholders, including legal experts and representatives from various professions, attend to discuss and adopt recommendations.<sup>90</sup>

Following the workshop discussions, a Communiqué summarising the agreed-upon recommendations is presented and adopted. This Communiqué is then incorporated into the Commission's report, which includes detailed discussions and recommendations on the subject matter. For instance, in May 2023, the Nigerian Law Reform Commission conducted a workshop with stakeholders to urgently amend the Capital Gains Act, CGTA, 2004, aiming to address anomalies identified by the Commission.<sup>91</sup>

The commission generally presents its recommendations and reform proposals as a final report. This report is then sent to the Attorney-General of the Federation, who forwards it to the

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<sup>89</sup> Policy and Legal Advocacy Center (PLAC), 'Nigeria Gets New Law Reform Commission Act', (June 2, 2022), <<https://placng.org/Legist/nigeria-gets-new-law-reform-commission-act/>> accessed 21<sup>st</sup> January 2022.

<sup>90</sup> Ibid.

<sup>91</sup> Ikechukwu Nnochiri, 'Law reform commission seeks review of Nigeria's Tax Act' *Vanguard* (May 24 2023), <<https://www.vanguardngr.com/2023/05/law-reform-commission-seeks-review-of-nigerias-tax-act/>> accessed 23<sup>rd</sup> January 2024.

Legislature via the Federal Executive Council. The transmission to the Legislature may be in the form of an Executive Bill. The Attorney-General of the Federation (AGF) may present the Commission's report on a reform program to the Federal Executive Council. At the expiration of three months after the Commission submits the report to the AGF, the reports shall be forwarded to the National Assembly.

Therefore, legislative processes do not only begin at the National Assembly; in some cases, they start as legislative reform policies from the Executive, usually initiated by the Nigerian Law Reform Commission through its law reform exercises. These policies are then passed through the legislative processes by the Legislature to become repealed or amended legislation.<sup>92</sup>

### **3.2.3 The Nigerian Judiciary**

The judiciary in Nigeria serves as a crucial pillar of governance, tasked with interpreting and upholding the law, ensuring justice, and maintaining constitutional order. As the third arm of government, it functions independently to check and balance the legislative and executive branches. The Nigerian judiciary derives its powers and functions primarily from the 1999 Constitution of the Federal Republic of Nigeria (as amended). Section 6 of the constitution establishes the judicial powers of the federation, vesting them in the courts. It states that judicial powers "shall extend to all inherent powers and sanctions of a court of law" and all matters between persons, or between government or authority and any person in Nigeria.

Hierarchical in nature, the Nigerian judiciary consists of various levels of courts with distinct jurisdictions, as outlined in Sections 230-296 of the 1999 CFRN. These courts include the Supreme Court, the Court of Appeal, the Federal High Court, State High Courts, as well as

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<sup>92</sup> Ibid.

specialised courts such as the National Industrial Court, the Sharia Courts of Appeal, and the Customary Courts of Appeal. Each court deals with specific types of cases relevant to its mandate and is governed by laws like the Federal High Court Act, the National Industrial Court Act, and various rules of court that define jurisdiction, powers, and procedural rules. Section 153 (1) establishes the National Judicial Council as the highest body vested with the regulatory powers of the judiciary in Nigeria.

The judiciary's core functions include dispute resolution, interpretation of laws and the constitution, protection of fundamental rights, and judicial review. Notable cases, such as *Ugwu v. Ararume*<sup>93</sup> and *Attorney-General of Lagos State v. Attorney-General of the Federation*,<sup>94</sup> exemplify the judiciary's contributions to electoral dispute resolution, constitutional interpretation, and safeguarding human rights.

### **3.2.3.1 Judicial Review as a Framework for Post-Legislative Scrutiny in Nigeria**

The judiciary plays a crucial role in maintaining the rule of law and ensuring the proper functioning of a democratic government. In Nigeria, judicial review is a key mechanism through which the judiciary exercises its authority, serving as a check on the legislative and executive branches in line with the principle of separation of powers. Judicial review refers to the power of the judiciary to examine the constitutionality of legislative acts and executive decisions,

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<sup>93</sup> [2007] 12 NWLR (Pt. 1048) 367.

<sup>94</sup> [2003] 12 NWLR (Pt. 833) 1.

invalidating those that violate the Constitution. This process is essential for maintaining the rule of law, protecting human rights, and upholding democratic principles.<sup>95</sup>

The 1999 Constitution of the Federal Republic of Nigeria (as amended) provides the legal foundation for judicial review. Section 1(3) emphasises the supremacy of the Constitution, declaring any inconsistent laws null and void. The judiciary, particularly the Supreme Court and the Court of Appeal, has the authority to interpret the Constitution and apply the principles of judicial review to assess the validity of laws. Through its decisions, the Supreme Court ensures that the legislature and executive operate within constitutional boundaries. Additionally, Section 4(8) specifies that the legislative powers of the National Assembly and State Houses of Assembly are subject to judicial scrutiny. Section 46 empowers individuals to seek redress in court for violations of their fundamental rights, as enshrined in Chapter IV of the Constitution, reinforcing the judiciary's role in judicial review. The landmark case of *Lakanmi & Anor v. Attorney General*<sup>96</sup>, set a significant precedent, affirming the courts' authority to review and nullify unconstitutional executive actions, thus providing a check against abuses of power.

Judicial review serves as a critical institutional framework for post-legislative scrutiny, ensuring that laws passed by the legislature conform to constitutional mandates. Post-legislative scrutiny involves evaluating the implementation and impact of legislation after its enactment. Judicial review is a key mechanism in this process, as it allows courts to assess whether laws are being applied in a manner consistent with constitutional principles.

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<sup>95</sup> Chukwunweike A. Ogbuabor, 'ExPanding The Frontiers Of Judicial Review In Nigeria: The Gathering Storm', *Nig. J. R.* [2011-2012], Vol 10 < <https://law.unn.edu.ng/wp-content/uploads/sites/12/2016/08/1.-Expanding-the-Frontiers-of-Judicial-Review-C.A.-Ogbuabor.pdf> > accessed January 25<sup>th</sup> 2024.

<sup>96</sup> [1971] 1 U.I.L.R. 201.

Judicial review as an institutional framework for post-legislative scrutiny operates through various mechanisms:<sup>97</sup>

- 1. Constitutional Adjudication:** Individuals or entities can challenge the constitutionality of laws or executive actions in court. The judiciary examines whether laws comply with constitutional provisions, scrutinising both the substance and form of legislation to ensure they do not violate fundamental rights or exceed legislative powers.
- 2. Protection of Fundamental Rights:** Nigerian courts are tasked with protecting the fundamental rights enshrined in the Constitution. Judicial review provides a means for individuals to challenge laws or actions that infringe on their rights, enabling courts to strike down such laws.
- 3. Checks and Balances:** Judicial review serves as a check on the legislative and executive branches, preventing the abuse of power and enforcing the principles of separation of powers. By invalidating unconstitutional laws, the judiciary ensures adherence to the rule of law. In support of this the Supreme Court of Nigeria in *Attorney General of Lagos State v. Attorney General of the Federation*,<sup>98</sup> affirmed the power of states in certain areas and clarified the limits of federal authority. This case is instrumental in understanding the delicate balance of power within Nigeria's federal system, ensuring that both state and federal governments operate within their constitutional confines.
- 4. Promoting Accountability:** Through judicial review, courts hold the legislature accountable for the laws it enacts, promoting transparency and ensuring laws serve the

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<sup>97</sup> Angela E Obidimma, 'The Impact of Judicial Review of Administration on the Application of Human Rights and the Rule of Law in Nigeria', *AJCAL* [2017] 1. 78, 79.

<<https://journals.ezenwaohaetorc.org/index.php/AJCAL/article/download/771/740>> accessed 30<sup>th</sup> January 2024.

<sup>98</sup> (n89).

public interest. The judicial review ensures that laws are not only legally sound but also fair, reasonable, and aimed at achieving legitimate public goals, balancing various interests, and considering the broader societal impact. This accountability enhances public confidence in the legal system and the government as a whole.

- 5. Public Interest Litigation:** This mechanism allows broader access to judicial review, enabling individuals or groups to bring cases addressing issues of public interest, even if they are not directly affected by the challenged law or action.

In conclusion, judicial review is an essential institutional framework for post-legislative scrutiny in Nigeria, ensuring that laws and executive actions are consistent with the Constitution. Through this mechanism, the judiciary upholds the rule of law, protects individual rights, and maintains the balance of power among the branches of government. Judicial review scrutinises whether enacted laws adhere to constitutional mandates, preventing the passage of laws that may infringe on fundamental rights, exceed legislative authority, or violate procedural requirements.

### **3.4 The Practice of Post-Legislative Scrutiny in Nigeria**

Post-legislative scrutiny is part of the oversight functions of committees, aimed at reviewing previously enacted laws to address any defects and to uncover corruption, inefficiency, or waste in their execution or administration.<sup>99</sup>

The constitution and the Standing Orders of both houses empower the National Assembly to initiate or direct investigations into any matter. This authority allows committees to monitor the activities of Ministries, Departments, and Agencies (MDAs) to ensure adherence to due process.

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<sup>99</sup> Sections 88 and 128 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).



Such oversight is regularly conducted to maintain checks and balances on the executive arm of government and promote good governance practices.<sup>100</sup>

In a more specific sense, Post-legislative scrutiny is part of the Investigative oversight carried out by standing committees or sometimes by Ad hoc committees created to look into an administrative or policy issue.<sup>101</sup> This form of oversight aims to review previously enacted laws to address any defects and to uncover corruption, inefficiency, or waste in their execution or administration.<sup>102</sup>

In particular, the legislative standing committees are responsible for continuous review of the work of MDAs, agency operations, policies and performance in their subject areas. These Committees operate as thematic committees within both houses of the National Assembly. There are currently 74 standing committees in the Senate and 134 standing committees of the House of Representatives in the 10<sup>th</sup> Assembly. These committees handle tasks within their thematic areas and jurisdiction as defined by the Senate Standing Order and the Standing Order of the House of Representatives.

The functions and responsibilities of standing committees include:

- a. Conduct oversight of executive agencies under their jurisdiction.
- b. Scrutinize measures and bills (draft laws or legislative proposals) assigned to them by their parent bodies in a detailed manner.
- c. Conduct hearings on bills, crimes, and other matters assigned, providing a mechanism for the expression of viewpoints by groups and individuals on matters of public interest.

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<sup>100</sup> Supra (n.67).

<sup>101</sup> (n.76).

<sup>102</sup> Sections 88 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

- d. Perform adjudicative functions by settling disputes and investigating crimes.
- e. Consider annual budget estimates of the executive agencies under their legislative jurisdiction

This empowers committees to investigate the activities of Ministries, Departments and Agencies (MDAs) including their implementation of laws made by the legislature and the administration of appropriated funds to make laws, correct defects in existing laws, and expose corruption and waste in the administration of approved funds.<sup>103</sup> It follows that where there is a defect in an existing law or the implementation of such laws has resulted in unintended consequences or where the results of implementation do not align with the intention of the lawmakers the relevant standing committees can cause an investigation to be made into that law and the implementing/responsible MDAs. The discharge of this responsibility closely aligns with post-legislative scrutiny practice in the UK Parliament House Common where PLS is undertaken by departmental select committees (sessional committees) that shadow government departments.

Unlike UK Government departments, which are mandated to conduct reviews and send findings to the relevant departmental select committees, Nigerian MDAs are not statutorily required to submit implementation reports to standing committees. However, these committees can request such reports while exercising their investigative powers. The discretion to conduct post-implementation reviews lies with the standing committees, which may act based on necessity or prompts from citizens, judicial recommendations, and other independent actors.

Notably, the House Committee on Legislative Compliance is one of the Standing Committees in the National Assembly. Established in 2007, this committee was formed to enforce compliance

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<sup>103</sup> 103 Senate Standing Order 2025, 88 and 89 1999 CFRN.

with House Resolutions, addressing the persistent and deliberate failure of some government parastatals and agencies to comply with legislative resolutions. Unlike other committees that oversee specific ministries or agencies, the Compliance Committee oversees all Government MDAs under legislative oversight. Order XVIII Rule 64 of the House of Representatives Standing Orders 2016 establishes the Legislative Compliance Committee, specifying:

64(1) There shall be a committee known as the Committee on Legislative Compliance consisting of no more than 30 members, constituted at the commencement of the life of the House.

Section 2(a) defines the jurisdiction of the house: Ensuring the implementation of all acts passed or deemed to have been passed by the National Assembly and all House resolutions on motions, petitions, and other resolutions.

This Committee also exists within the Senate Standing Committees, even though it is not explicitly mentioned in the Senate's standing orders. These committees have the authority to oversee law implementation, engage with executive agencies on compliance, and address non-implementation issues. Their role ensures that legislative intentions are effectively translated into public benefits. This practice mirrors Lebanon's parliamentary approach to PLS, where ad-hoc committees are established to follow up on the implementation of laws.

These committees at the end of their investigation submits reports containing their findings and recommendations to the relevant house. The general outcome of committee oversight include:<sup>104</sup>

1. Amendment of Existing legislation
2. Enactment of new legislation

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<sup>104</sup> Policy and Legal Advocacy Centre (PLAC) , 'A Guide To The Nigerian National Assembly' (2015), <[https://www.nilds.gov.ng/wp-content/uploads/2022/10/guide\\_to\\_nass.pdf](https://www.nilds.gov.ng/wp-content/uploads/2022/10/guide_to_nass.pdf)> accessed 23<sup>rd</sup> January 2024.

3. Policy Intervention to correct defect in implementation
4. Exposing and Curtailing Corruption/reducing waste in governance

Furthermore, in Nigeria, these committees in discharging their constitutional duties may adopt public hearings. Public hearings are crucial for assessing the public acceptability of a law or legislative action. According to Senate Standing Orders, specifically order 102.-(2E)II, each hearing by a committee or subcommittee must be open to the public. However, the committee or subcommittee can vote, in an open session with a majority present determined by roll call, to close all or part of the hearing if disclosing testimony, evidence, or other matters would endanger national security or violate any law or Senate rule.

When conducting public hearings which could be: investigative, legislative, oversight, quasi-judicial, the committee may invite stakeholders and the public to participate in the process, including CSOs, the media, special individuals, and members of the public. In this context, Civil Society Organisations, the media, interest groups, and the public play crucial roles that support the oversight function of legislative committees, either directly or indirectly.<sup>105</sup> These roles include:

- a. Monitoring the legislature's progress in identifying societal needs and gaps in legal frameworks and public expenditure.
- b. Raising questions about accountability and transparency, facilitating dialogue and consultation on legislative proposals or resolutions through memoranda, hearings, or protests.
- c. Identifying legislative or governance challenges, serving as an early-warning mechanism to aid oversight activities.

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<sup>105</sup> (n67).

- d. Promoting civic engagement in the legislative process and governance, such as the media acting as an educator and whistleblower in the polity.

In practice, the National Assembly's oversight or scrutiny by its committees primarily focuses on monitoring the implementation of the budget according to the annual estimates approved by the Assembly. Each committee collaborates with relevant ministries, departments, and agencies (MDAs) to assess how effectively resources and services are distributed and delivered, and to evaluate their impact on the general populace. To achieve this, committees sometimes conduct investigative hearings and summon MDAs or individuals, including witnesses to appear before it and testify.

For example, in August 2023, the House of Representatives Ad-hoc Committee, chaired by Hon. Yusuf Gadgi, investigated allegations of job racketeering and mismanagement of the integrated payroll and personnel system. One such MDA under investigation was the Federal Character Commission, where the committees summoned witnesses to testify before it. Additionally, the Registrar of Jamb was also summoned in the same period to explain why it employed 300 persons without following due process.<sup>106</sup>

Another instance occurred in December 2019 when the 9th National Assembly investigated the Nigerian Social Insurance Trust Fund over alleged illegal expenditures, including approximately 2.3 billion Naira spent on staff training without approval. In November of the same year, the committee began an investigation into the collapse of a Niger Delta company built with 1.89 billion Naira. Additionally, the House of Representatives Ad-hoc Committee investigated the number and conditions of capital projects across Nigeria, valued at 230 billion Naira, abandoned

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<sup>106</sup> Policy and Legal Advocacy Center (PLAC), 'House of Reprs Investigates Job Racketeering in FCC, JAMB' (August 17, 2023). <<https://placng.org/Legist/house-of-reprs-investigates-job-racketeering-in-fcc-jamb/>> accessed 24<sup>th</sup> January 2024.

by the federal government.<sup>107</sup> In practice, the National Assembly has not assigned any committee an exclusive mandate to evaluate laws. However, in the process of amendment, the amendment bill is sent to the relevant committee at the committee stage of the legislative process.

In practice, the involvement of CSOs in the legislative oversight stage has predominantly occurred during the budget process, investigative hearing stage, and the committee stage of an amended legislation. Their participation has largely been passive, with CSOs acting as commentators and spectators in these processes and even within the budget process, there has been a call for enhanced engagement of CSOs. In certain cases, CSOs have participated in committees during the Amendment Bills committee stage to share their opinion on an amendment Bill in the National Assembly, although it is crucial to note that by this stage, the scrutiny of laws by the legislature through its committees has already taken place. The initiation of Amendment Bills in the post-legislative stage takes place after committees have conducted scrutiny, assessed law implementation and impact, and submitted reports to the house which, if the house considers necessary, may initiate a bill to amend or repeal that law. There is no specific regulation or system in the House that requires or mandates committees to consider opinions from CSOs before issuing legal documents during the post-legislative stage as it relates to the scrutiny of laws.

It is important to note that efforts to enhance CSO engagement with the Legislature have led to the creation of a civil society liaison office. This initiative, launched in 2022 by the Senate Committee on NGOs and Diaspora and the House of Representatives Committee on CSOs and

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<sup>107</sup> Sunday Aborisade And Leke Baiyewu, 'Abandoned reports: National Assembly's long list of endless probes, loud hearings, dead results' (10th May 2021), <<https://punchng.com/abandoned-reports-national-assemblys-long-list-of-endless-probes-loud-hearings-dead-results/>> accessed 25<sup>th</sup> January 2024.

Development Partners in collaboration with PLAC, aims to strengthen connections and improve communication between the National Assembly and civil society organisations.<sup>108</sup> However, it is essential to note that these efforts focus on promoting civil society engagement in existing roles without a direct link to post-legislative scrutiny.

In conclusion, despite the constitutional backing for post-legislative scrutiny and the existence of structures to trigger post-legislative scrutiny, its practice is still novel. Unlike the UK, Indonesia, Lebanon, and Belgium parliaments, Nigeria lacks standardised systems, methodologies, and procedural mechanisms for conducting post-legislative scrutiny. There is no dedicated body responsible for scrutinising laws. Instead, post-legislative scrutiny in Nigeria is predominantly led by the legislature through legislative committees in collaboration with MDAs, with the Law Reform Commission complementing these efforts as an independent executive body and the judiciary serving as a distinct body complementing scrutiny of laws through judicial review. There is a notable absence of formal systems, strategies, tools, and institutional and legal frameworks tailored toward civil society engagement in the PLS process in practice. Consequently, CSOs in Nigeria currently lack established mechanisms they can employ to trigger or engage in the actual process of scrutinising existing legislation and the need for such a system or mechanism also appears to be absent in the prevailing literature on this topic.

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<sup>108</sup> Supra (n. 4).

## **CHAPTER FOUR**

### **THE ROLE OF CIVIL SOCIETY ORGANISATIONS IN POST-LEGISLATIVE SCRUTINY**

This chapter extensively examines the role of civil society in post-legislative scrutiny (PLS). It discusses the rationale and significance of involving Civil Society Organizations (CSOs) in PLS, highlighting their beneficial impact in a bid to make a case for their involvement in the Post legislative scrutiny process. This chapter also explores key Strategies and Tools for Civil Society Organisation Engagement in Post-Legislative Scrutiny, categorised as Regulatory and institutional frameworks. Lastly, this chapter also identifies some of the underlying challenges hindering CSOs' engagement in Post legislative scrutiny.

#### **4.1 Rationale for Civil Society Organisation Involvement in Post-Legislative Scrutiny**

CSOs have the potential to establish a connection between citizens and the legislature. Citizens often find it challenging to directly engage with lawmakers and tangibly impact the decision-making process. Therefore, Civil Society Organisations (CSOs) are seen as vital intermediaries, facilitating constructive communication between citizens and public authorities. CSOs are independent critical stakeholders in the governance sector referred to in some literature as the fourth arm of government, third sector, or intermediaries. They fulfil roles essential to the expectations of representative democracy, effectively bridging the divide between citizens and state institutions.<sup>109</sup>

The engagement of CSOs in post-legislative scrutiny provides an avenue for community participation in decision-making, emphasising grassroots mobilization, termed as a bottom-up

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<sup>109</sup> (n6).



approach to PLS. This approach would allow citizens' needs and concerns to take centre stage, facilitating the adoption of realistic, effective solutions and innovative strategies for tackling issues or deficiencies in existing law. For PLS to be effective it must adopt a 'bottom-up' or deliberative approach, recognising that those subject to collective decisions should have a voice in the processes; to accomplish this, there needs to be channels through which parliament can communicate with citizens and gather their perspectives or experiences with parliament legislations. CSOs can serve as the link connecting parliament to citizens, conveying citizens' opinions on how laws impact them, and acting as the bridge connecting citizens to parliament to communicate their concerns and needs regarding existing laws. The involvement of CSOs in PLS reflects the wider obligations of contemporary parliaments to engage with their constituents and evaluate how their legislative actions contribute to or affect their communities.

Additionally, the structured framework of PLS within the legislature aims to enhance the quality and relevance of laws by evaluating their implementation and impact on citizens. It can be argued that for the stated objective of PLS to be achieved, the involvement of 'the people' or people's data must play a central role both at the initiation stage of PLS and during the conduct of PLS itself. While Government MDAs can supply primary information on the implementation of laws, including whether they have been enforced and the associated challenges, it is citizens who can provide realistic feedback on the true experiences and impacts of legislation.

CSOs operate independently to engage with various levels and sectors, encompassing national, regional, and grassroots levels, as well as sectors spanning education, public health, equitable gender representation, fostering women's agency, childcare provisions, youth advancement, environmental sustainability, technological innovation, cultural heritage conservation, and enhancing private sector growth. This implies that the scope of operations for Civil Society

Organisations is as broad as the scope of laws, as laws regulate various aspects and segments of citizens' lives.

Through their work, CSOs engage directly with various segments of society affected by the implementation of laws and the provision of services enabled by such laws or policies. As a result, they are aware of changes in the law and the real impact laws have on the people they are meant to serve. Their work allows them to interact with the law, and observe its impact, and citizens' experiences, whether aligned with the law's intentions or resulting in unintended or adverse consequences. As a result of this direct engagement, CSOs have direct access to relevant information, making them well-placed to contribute valuable insights and citizens' feedback or perspectives to the PLS process, thereby, aiding the understanding of the real-world experiences of the people with laws and ensuring that laws are practical and beneficial for the populace.

For formally established Civil Society Organisations (CSOs) in Nigeria, including Non-profit Think Tanks, their core mandate revolves around providing services, advocating for societal needs, and addressing the concerns of specific demographics. A fundamental aspect of their operation is the continual mapping of citizens' needs through research, surveys, and data analysis. By gathering and analysing valuable information, these CSOs gain insights into the requirements of their target demographic, while simultaneously attracting resources, building capacity, and developing expertise in their respective fields.<sup>110</sup>

Post-legislative scrutiny (PLS) hinges on the evaluation of the impact and implementation of laws, primarily reliant on data collected from government agencies by legislative committees. However, CSOs, positioned strategically with expertise in data collection and analysis, serve as invaluable complementary sources of primary independent data. Beyond presenting narratives or

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<sup>110</sup> (n4).

facts related to the impact of laws, CSOs possess the capacity to substantiate these narratives with primary data.

Furthermore, the process of collecting and analysing data during post-legislative scrutiny involves intensive document reviews and extensive committee discussions, requiring technical knowledge and expertise often lacking within legislatures. Moreover, the data collection, collation, and analysis processes by legislative committees are frequently inadequate. Thus, collaboration with CSOs becomes imperative to enhance the effectiveness of the scrutiny process as CSOs possess relevant technical expertise or knowledge to assist legislative committees. Additionally, CSOs can also conduct independent scrutiny and analysis and provide expert opinions (in the form of report or memorandum), analyses, and evaluation of the law, its administration, and practice, identify any gap between a law and its practice, and recommend to Parliament how this can be dealt with, making room for CSOs to participate in triggering the PLS.<sup>111</sup>

Lastly, CSOs function as watchdogs monitoring the enforcement and implementation of laws within their sphere of influence. They play a pivotal role in upholding democratic principles by fostering accountability and transparency in the governance system. CSOs are complementary platforms for representation; they possess autonomy enjoying independence from government control. As a result, well-positioned to contribute independent valuable insights into the implementation and performance of laws in their thematic areas. More so, they can mobilise communities to actively participate in the monitoring and observation of the implementation of laws by relevant bodies. Through diligent follow-up and documentation of law implementations, CSOs can be a credible source for verification of information/data provided by MDAs and can

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<sup>111</sup> Ibid.

provide perspectives on quality standards and best practices to inform future discussions related to an existing law. It is penitent to mention that CSOs can also take advantage of these where channels are available to trigger Post legislative Scrutiny of laws, which underscores the deliberative or bottom-up approach to PLS.<sup>112</sup>

#### **4.2 Significance of Civil Society Organisation Involvement in Post-Legislative Scrutiny**

The significance of Civil Society Organisations (CSOs) in post-legislative scrutiny cannot be overemphasised. CSOs and the legislature are both representative bodies that represent the interests of citizens and serve as important players in the accountability system. The collaboration between these two bodies has the potential to improve the overall quality and effectiveness of laws.

The legal and formal structures of Parliament are intimidating for citizens, potentially hindering their active participation, and Legislators have limited time and require strategic planning to connect with their constituents. Civil Society Organisations serve as a focal point, enhancing accessibility, and facilitating engagement with government institutions. They establish platforms for citizens to interact with parliament, enabling them to express their needs and experiences, thereby connecting different segments of society in the Post Legislative scrutiny Process.

CSOs are strategically positioned to offer extensive opportunities for collaboration across local, national, and international levels, given their diverse contacts, areas of focus, and networks. These organisations serve as channels that facilitate public outreach and engagement with parliament and vice versa by creating platforms through which citizens can express their needs

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<sup>112</sup> Dominik Brenner and Mihály Fazekas, 'Civil Society Interventions To Enhance Parliamentary Oversight' *Transparency International* (2022).< <https://knowledgehub.transparency.org/assets/uploads/kproducts/CSO-interventions-to-enhance-parliamentary-oversight.pdf> > (Accessed 3<sup>rd</sup> February 2024).

and communicate their feedback on the impact of legislative decisions. CSOs contribute not only to the system's capacity for providing a deliberative forum but also serve as a conduit for improving citizen participation in PLS.<sup>113</sup> The involvement of civil society organisations would establish a cooperative relationship between citizens and the legislature, ultimately enhancing the overall quality of government.

Additionally, since laws are made to serve their needs, it is crucial to consider their perspectives in crafting high-quality legislation. Civil Society Organisations are present at various levels and sectors, including grassroots and minority groups. They play a significant role in bringing forward issues, concerns, and needs of even underrepresented groups that may not be adequately addressed in existing legislation. Involving CSOs in the post-legislative scrutiny process would ensure that the viewpoints and feedback of citizens are taken into account during the examination of laws. CSOs can draw the attention of lawmakers to ensure that legislation is gender-sensitive, void of discrimination, and highlight inequalities resulting from the implementation of laws leading to a more responsive and inclusive PLS process.

The accessibility of CSOs to beneficiaries further empowers parliament to engage and mobilise communities effectively for the development of inclusive legislation.<sup>114</sup> Seember Nyager in his paper presentation for PLAC identified CSO's engagement with the legislature as the best practice for inclusive lawmaking.<sup>115</sup> The involvement of CSOs in PLS would ensure that laws are relevant, effective, and meet the needs of citizens at every point in time, thereby impacting the overall quality and effectiveness of laws.

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<sup>113</sup> Ibid (n6).

<sup>114</sup>(n6).

<sup>115</sup> (n7).

Legislative committees heavily depend on data for the Post-Legislative Scrutiny (PLS) process. When parliament undertakes assessments and investigations into specific issues of public importance, access to sufficient information and data becomes crucial. The committees require evidence illustrating how laws are put into practice and assessing their performance to identify any gaps or inadequacies in meeting legislative intent and efficiency in meeting the relevant needs of citizens at a given point in time. High-quality, timely, and diverse data categorised by various demographic factors such as income, gender, age, race, ethnicity, migration status, disability, geographic location, and other pertinent characteristics is essential for conducting thorough assessments of laws by parliament. This necessitates technical knowledge and expertise. Involving CSOs with access to relevant data and expertise (in interpreting and presenting data) can increase the quality of PLS and make the PLS process less burdensome on the committees.

Typically, data and information for PLS are extracted from reports generated by Government MDAs. While government agencies' reports are commonly used as data sources, CSOs can also provide independent and valuable people-centric data for aiding in the effective conduct of PLS; it follows that Parliament will have a fuller, more nuanced picture of development if it also receives and considers information from CSOs. When systematic approaches involving CSOs are in place, they can contribute significantly to the post-legislative scrutiny of laws and policies. Additionally, CSOs can conduct independent assessments, analyse the effects of laws, and even collect and publish legislative data, providing reliable reports to legislative committees. Furthermore, CSOs can actively engage with parliament by following up on actions taken to address findings and recommendations arising from the ex-post scrutiny process. Moreover, CSOs can engage with parliament by monitoring actions taken to address findings and recommendations emerging from the post-legislative scrutiny process.

Lastly, the Parliament's duty of oversight and scrutinising laws is intended to guarantee the successful and efficient implementation of laws, as well as the judicious utilisation of services and resources. CSOs also play roles as watchdogs allowing them to monitor the enforcement and implementation of laws within their sphere of influence. Their involvement in the process can lead to more transparency in the PLS process increase public confidence in the scrutiny of laws and repose public trust and confidence in the legislature.

### **4.3 Strategy and Tools for Civil Society Organisation Engagement in Post-Legislative Scrutiny**

There are likely many instances of civil society organisations' engagement being carried out in different sections of the legislature, even if they are not so named. However, there is a need to improve existing approaches and establish formal, effective strategies, tools, and systems within parliament to coordinate and enhance the legitimacy and processes of this engagement, particularly in the area of PLS.

It is crucial to recognise that there is no one-size-fits-all engagement strategy that both CSOs and Parliament can adopt, as parliament structures and operations are different in different countries, impacting the strategies and tools each parliament should employ. Furthermore, external factors such as circumstances and context exert a significant and fundamental influence on the effectiveness or even feasibility of civil society engagement strategies and tools within a parliament. Additionally, it is also penitent to state that factors such as structure, resources, literacy, technical knowledge, and expertise could play a vital role in the capacity in which Parliament engages with a CSO and determines the engagement strategy or tools it chooses to adopt.

This research however would focus on general strategies and tools that parliament can employ for engaging with CSOs in the Post Legislative Scrutiny stage. These strategies and tools for better understanding will be categorised into two main groups:

1. Regulatory Framework
2. Institutional frameworks.

### **4.3.1 Regulatory Framework**

To create an effective and sustainable strategy for the involvement of CSOs, especially in the area of post-legislative scrutiny, there is a need to create a conducive legal environment that encourages collaboration. This would involve the development of a mutually agreed upon engagement framework whether in the form of legal or policy documents, (such as memorandums of understanding, manual of operations, and even a legal framework) that clearly define the basis for collaboration, outline the roles and responsibilities of both Parliament and CSOs, establish engagement procedures, and structure that incorporates systems for facilitating and fostering mutual understanding between CSOs and Legislators in PLS process.

Additionally, this regulatory framework establishes a mechanism to facilitate engagement strategies, like assigning a specific liaison tasked with promoting collaboration. Additionally, it could include forming a cross-sector advisory body to ensure ongoing and sustainable partnerships within PLS and related areas. These would create a legitimate foundation for the direct involvement of CSOs in the post-legislative review process.

Efforts have been undertaken in Nigeria to establish a framework aimed at improving the interaction between Civil Society Organisations (CSOs) and the Parliament. In 2022, the Senate



Committee on NGOs and Diaspora and the House of Representative Committee on CSOs and Development Partners collaborated with PLAC to develop and implement a Standard Operating Manual. This manual was created after the establishment of a Civil Society Organisation Liaison Office (CSOLO) to strengthen connections between CSOs and facilitate better communication between the National Assembly and civil society entities.<sup>116</sup> The objectives of the manual include:

- a. Defining the mandate and operational scope of CSOLO.
- b. Specifying the objectives, mechanisms, and structures necessary to enhance the administration, management, and coordination of CSOLO.
- c. Delineating the roles and responsibilities of the Advisory Committee and CSOLO staff.
- d. Establishing a Code of Conduct for CSOLO personnel.
- e. Providing a detailed workflow for the processes involved in CSOLO operations.
- f. Outlining Key Performance Indicators (KPIs) for evaluating CSOLO's performance.
- g. Offering guidance on advocacy efforts and strategies for engaging with the National Assembly.

While this effort is commendable, the practical implementation of the engagement framework and the functioning of the liaison office have been largely inactive and ineffective. Despite the commitment made by Hon. Kabiru Idris to revive the Civil Society Organisations Liaison Office in the National Assembly by the first quarter of 2023,<sup>117</sup> little progress has been made in that

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<sup>116</sup>(n 5).

<sup>117</sup> Policy and Legal Advocacy Centre (PLAC), 'PLAC Convenes Multi-Stakeholder Review Meeting with CSOs, NASS and Government Agencies on CSOs' Framework', (November 25, 2022), <<https://placng.org/Legist/plac-convenes-multi-stakeholder-review-meeting-with-csos-nass-and-government-agencies-on-csos-framework/>> (Accessed 30th January 2024.)

regard. It is crucial to take proactive measures to revive, review, and restructure the office, allowing for meaningful participation in post-legislative scrutiny processes. There is a pressing need for a more robust regulatory framework to legitimise and formalise partnerships between Civil society organisations in the PLS process in Nigeria.

### **4.3.2 Institutional Framework**

For effective involvement of Civil Society Organisations in PLS, there is a need to establish operational mechanisms or tools within the parliament to facilitate this engagement. These could take the shape of already existing systems or structures such as committees, roundtables, consultative forums, public hearings, and petition platforms. Additionally, formal structures like dedicated bodies, offices, or departments, along with appointed contact persons or groups mandated to facilitate and sustain collaboration are considered important.

Establishing formal structures and mechanisms to facilitate the engagement of CSOs in PLS would provide them with a legitimate platform to both trigger and actively participate in the actual scrutiny of laws. This would elevate CSOs to the status of primary actors in PLS, rather than confining their participation to public hearings during the committee stage of amending bills, where they often act mostly as commentators and observers. This would enable CSOs to directly participate in consultations, receive briefings on key issues or submit reports, and provide supplementary information or data that would enrich proposals and enhance their participation generally in deliberation during the post-legislative scrutiny phase. By leveraging their knowledge, technical expertise, and experience, CSOs could significantly contribute to the enhancement of laws ensuring their beneficial impact on citizens and fostering a more inclusive and effective PLS process.

We will explore below, some of the systems and structures that Parliament can adopt to encourage CSO engagement as primary stakeholders in PLS.

#### **4.3.2.1 Committee and Sub-Committee Establishment**

Legislative committees are created with the mandate to review specific matters of policy, government administration, or performance. Committee inquiries serve several important functions including advising the Legislature on bills or other matters, providing information and evidence on issues before the Legislature, and scrutinising government agencies' activities, reports, and performance through committee operations and public hearings. Section 62 of the 1999 Constitution of the Federal Republic of Nigeria grants committees the authority to collect evidence, summon individuals, and request documents as needed to fulfil their duties. Despite being underutilised, this provision empowers committees to conduct reviews and scrutinise laws to rectify any deficiencies. Notably, it does not confine the summoning authority solely to government officials, but extends to any individual, thereby creating an avenue for committees to engage Civil Society Organisations (CSOs) in providing evidence, reports, and insights as significant stakeholders in the post-legislative scrutiny (PLS) process.

Both Standing and Ad-hoc committees, along with their respective subcommittees, serve as mechanisms within the legislative framework to facilitate CSO engagement in the PLS process. In Nigeria, the presence of parliamentary committees dedicated to CSOs, such as the "House of Representatives Committee on CSOs and Development Partners" and the "Senate Committee on NGOs and Diaspora," represents a proactive approach to establishing structures within Parliament that foster collaboration with CSOs. The collaborative efforts between these committees and CSOs have resulted in the establishment of the Civil Society Liaison Office in the National Assembly. However, these committees have not been fully utilised, yielding

minimal impact in terms of post-legislative scrutiny or oversight. It is imperative to reassess and restructure these committees to enable direct CSO engagement in the PLS process. Furthermore, joint or dedicated committees or task forces comprising CSO members and legislators should be specifically formed to work on specific PLS initiatives.

#### **4.3.2.2 Civil Society Organisations Liaison Office (CSOLO)**

The Civil Society Organisations Liaison Office (CSOLO) typically acts as an intermediary connecting civil society organisations (CSOs) with governmental or intergovernmental bodies. Its primary functions encompass serving as a communication focal point, fostering dialogue, promoting partnerships, advocacy and policy influencing, supporting capacity-building, and facilitating connections and collaborations among CSOs and with governmental bodies such as legislators. Examples of such CSOLOs include the United Nations Non-Governmental Liaison Service (UN-NGLS), the European Union Civil Society Liaison Office, the African Union Civil Society and Diaspora Directorate (CIDO), and the Civil Society Organisations Liaison Office (CSOLO) within the Nigerian National Assembly.

The establishment of a civil society liaison office within the Nigerian National Assembly aims to strengthen connections among CSOs, bridging the gap and enhancing communication between the National Assembly and civil society organisations. This initiative seeks to establish structures conducive to fostering collaboration between CSOs and Parliament. However, despite its potential, the CSO liaison office has generally remained ineffective and underutilised, particularly as it relates to post-legislative scrutiny (PLS) of laws. To address this, The National Assembly can reactivate and empower the civil society liaison office in the National Assembly to focus on PLS activities, to facilitate structured collaboration between CSOs and the Legislature.

Where necessary, new liaison offices should be established specifically to foster collaboration between CSOs and the legislature on PLS activities.

#### **4.3.2.3 Committee Meeting/Consultations**

Legislative Committee meetings offer a crucial platform for organisations such as CSOs and individuals to actively participate in the law-making process by sharing their viewpoints for consideration. These gatherings provide them with an opportunity to express their perspectives, ensuring that their voices are heard and taken into account. With both chambers committed to enhancing the effectiveness of these committees in their discussions, investigations, and legislative reviews, it becomes imperative to facilitate avenues for CSO involvement in these meetings. This facilitates opportunities for CSOs to partake in consultations, receive briefings on significant issues or reports, and furnish written materials to support their proposals and discussions.<sup>118</sup>

#### **4.3.2.4 Round Table Discussions**

Parliament from time to time organises roundtable discussions on relevant issues. This could be utilised by committees to create avenues for various stakeholders, such as Civil Society Organisations to contribute their insights on law implementation and impact, as well as present their independent findings or reports. CSOs due to their wide network of expertise can contribute extensively on a range of topics, this provides the legislature with opportunities to reaffirm its dedication to enhancing public participation through CSOs, foster deeper engagement, and strengthen legislative capacity to carry out effective and inclusive oversight. Committees should

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<sup>118</sup> (n6).

ensure that roundtable outcomes are shared in committees and incorporated into the scrutiny process of laws.<sup>119</sup>

#### **4.3.2.5 Public Hearings**

Legislative committees convene public hearings to gather input from individuals with relevant expertise or experience on matters relevant to their inquiries. This aids committees in gaining deeper insights into the practical realities of enacted legislation and facilitates effective oversight and scrutiny of laws. CSOs can offer a vast network of individuals with first-hand experience, specialised knowledge, and invaluable insights derived from their interactions with various segments of society.

The Standing Orders and Rules of the two houses of the National Assembly, create room for committees to conduct public hearings in discharging their mandate. It is important to have such a forum, particularly given the increasing use of public hearings. Committees should consider organising special hearings to gather insights from CSOs before finalising reports or introducing amendment bills resulting from post-legislative scrutiny of laws.

More so, effective public hearings, efforts should be made to institutionalise channels for conducting public hearings effectively. This entails Parliament and CSOs collaborating to establish criteria for participation in public hearings and implementing ongoing collaborative initiatives between both parties. Once established, a timeline for engagement should be delineated, suggesting that public hearings be scheduled either on a fixed basis or as needed, akin to the establishment of ad hoc committees for specific mandates/legislation.

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<sup>119</sup> Ibid.

#### **4.3.2.6 Petitions**

Petitions serve as a crucial avenue for citizens and organisations like CSOs to communicate their concerns to the Legislature, engage in the process, and contribute to law-making. While petitions do not compel action, they play a significant role in raising awareness on issues affecting citizens/constituents and allow Legislators to learn what actions the citizens/constituent wants them to take. Committees can be set up to examine such petitions, gather relevant evidence, consult with CSOs and other experts or stakeholders, and address complaints raised by such petitions.

Almost all CSOs deal with issues at the law and policy implementation level and strive to achieve positive change in their respective fields. Petitions/e-petitions are instrumental in enabling the public and CSOs to bring relevant matters to the attention of legislators. Effective engagement requires appropriate capacity in both Parliament and CSOs to undertake their responsibilities, CSOs can be educated to better enable them to make submissions

The secretariat of the committee can invite relevant CSOs to:

1. Workshops aimed at familiarising CSOs and other stakeholders with petition procedures.
2. Formal events designed to facilitate interactions between committees/legislators and CSOs, fostering productive relations.<sup>120</sup>

### **4.4 Challenges of Civil Society Organisation Engagement in Post-Legislative Scrutiny**

#### **4.4.1 Inadequate Regulatory and Institutional Framework for CSO Engagement**

Most avenues for Civil Society Organisations (CSOs) to engage are ad hoc, fleeting, and ineffective, lacking sustainability to fully realise their potential. CSOs face barriers in engaging

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<sup>120</sup> Ibid

with Parliament due to ineffective mechanisms and the absence of regulatory frameworks legitimising such interactions. While Parliament recognises CSOs as valuable channels for communication with citizens, little progress has been made to institutionalise and establish an active engagement space.

Despite the establishment of the Liaison Office in the National Assembly in 2022 to promote engagement, CSOs contribute minimally to Parliamentary oversight committees, crucial for post-legislative scrutiny in Nigeria and public consultations. This lack of engagement deprives them of directly participating in discussions on deliberations, outcomes, or findings. Furthermore, there is a notable absence of mechanisms to document or receive feedback from citizens & CSOs at the actual stage of scrutinising laws. Even at the Bill consideration stage where CSOs are allowed to give their opinion on Bills, there is minimal evident action taken on the feedback provided by CSOs to Parliament.

#### **4.4.2 Lack of Legislative Support and Partnership**

The dynamic between civil society organisations and the state often embodies suspicion and tension. Predominantly, government authorities perceive civil society groups as rivals for power, influence, and public legitimacy, rather than as collaborators in fostering development. There is a need for re-orientation of both CSOs and Legislators to understand their representational mandate and how their collaborative role in governance benefits citizens, thus shifting their perspective/relationship to a more collaborative one, leveraging their respective expertise, resources, and efforts. By working together, they can enhance the effectiveness and relevance of laws, to ensure that laws are effective, relevant, and serve the interest of the beneficiaries of these laws. This would lead towards a more deliberative, ‘bottom-up’ approach to PLS and contribute to the overall quality of laws and governance.



#### **4.4.3 Lack of Adequate Funding and Resources**

The lack of adequate funding presents a persistent challenge for Civil Society Organisations, hindering the effective discharge of their mandate across the country. Many CSOs in Nigeria heavily rely on donor funding and goodwill from various international and domestic organisations. However, these funds are often earmarked to meet the specific demands of the funding organisations, imposing restrictions on CSOs' operations. Even when funds are not restrictive, they are typically insufficient, leaving little to no room for the CSOs to extend their activities to areas such as Post Legislative Scrutiny. engaging in effective monitoring of the implementation of law, and its impact, and providing feedback to the legislature would require technical expertise and financial resources, thereby placing additional financial strain on CSOs.

Additionally, Civil society organisations require adequate technical support, human capital, and research tools to effectively carry on their work, particularly as it relates to PLS. CSOs would be primary actors in the PLS process and play a crucial role in providing data to the Legislature and its committees; helping them understand the true impact of laws on beneficiaries. It is imperative that the data they collect, compile, and analyze is accurate and of high quality. This necessitates that CSOs conduct surveys, questionnaires, and interviews in the communities they serve. Insufficient capacity and resources, both technical and human, would hinder CSOs' ability to gather and document meaningful data for PLS processes.

Lastly, Legislative scrutiny bodies (Committees) also lack adequate resources to engage with community/community organisations or conduct direct democracy-style scrutiny of laws, which includes input not only from government entities/MDAs but also from CSOs and citizens. This presents a significant financial challenge to the Legislature, especially considering its existing financial constraints that impede the effective discharge of its oversight functions. Such limitations can also hinder CSOs' involvement in the post-legislative scrutiny process.

#### **4.4.4 Inadequate Training and Awareness**

CSOs often struggle as a result of poor understanding of government and corporate/private sector workings, along with deficiencies in personnel expertise, competence, connections, advocacy strategies, and confidence necessary to liaise and effectively collaborate with government bodies, both at state and federal levels. Typically, CSOs limit their involvement with legislatures to the pre-legislative and legislative stages, primarily focusing on committee-level Bill considerations. There is a pressing need to educate CSOs on their potential contributions to the post-legislative process as the majority of CSOs are not aware of PLS and the underlying impact it could have on the overall effectiveness and quality of governance.

Additionally, civil society organisations face limited capacity issues in terms of knowledge and technical skills. Relying heavily on volunteers to carry on most of their work, there is a cogent need for comprehensive training programs to equip CSO staff and volunteers with the essential knowledge and skills necessary for meaningful participation in post-legislative scrutiny processes. Although more specialised NGOs may possess technical expertise, they often lack awareness of their potential roles in post-legislative scrutiny of laws.

## CHAPTER FIVE

### SUMMARY, CONCLUSION AND RECOMMENDATIONS

This chapter discusses the summary, conclusion and recommendations. It presents the results of the research looking at the summary of findings, recommendations, key contributions to knowledge, areas of further research as well as conclusion.

#### 5.1 Summary of Findings

The primary objective of this research was to examine the role of civil society in post-legislative scrutiny and to improve the existing approach of post-legislative scrutiny into a more bottom-up, inclusive, and effective approach. This research has successfully met its goals by exploring the necessity and significance of CSOs' involvement in PLS, identifying strategies to improve their engagement, and addressing challenges hindering their participation. Additionally, the research addressed the key questions posed, providing solutions, recommendations, and conclusions. Through an extensive review of relevant literature and legal principles, several key findings emerged as follows:

1. The findings of this research underscore the need for the involvement of CSOs as pivotal independent actors capable of enhancing the inclusiveness and effectiveness of PLS. While PLS is crucial for ensuring the efficacy of laws and their impact on citizens, the current top-down approach predominantly involves the legislature, the Law Reform Commission, and government ministries, departments, and agencies (MDAs) with limited citizen engagement. This results in an inadequate understanding of the real-world impacts of legislation on its intended beneficiaries, questioning the effectiveness and inclusiveness of the current PLS process. CSOs emerged as pivotal actors capable of

enhancing inclusiveness, transparency, and responsiveness within PLS, given their role in advocating for transparency, accountability, and public participation in the democratic system.

Through their direct engagement with various societal segments affected by the implementation of laws and their role as watchdogs monitoring government actions including the implementation of these laws; CSOs possess firsthand knowledge of how laws impact citizens. As a result, CSOs are strategically positioned to offer citizen perspectives and experiences to the PLS process by providing valuable, independent, people-centric data on the real-world impacts of laws, thereby enhancing its exclusivity, effectiveness, and transparency.

Additionally, CSOs as citizen representational groups and intermediaries could bridge this gap and establish meaningful links between people and lawmakers to ensure that the practical benefits of PLS are realised; reshaping the current approach of PLS into a more "bottom-up" and inclusive approach and in-turn impact the effectiveness of laws.

2. This research finds that there is a lack of formal collaboration between CSOs and the legislature during the post-legislation stage, specifically in PLS and further reveals that there are currently no specific, sufficient and effective strategies and tools in place to foster such collaboration. Though efforts have been made to address CSO engagement with the legislature in Nigeria, including the establishment of a civil society liaison office and practices such as public hearing. However, these initiatives primarily focus on promoting CSO engagement in existing roles mostly in the pre-legislative and legislative stage, with no direct link to PLS. Moreso, the Liaison office's current inactivity

underscores the need for more robust engagement frameworks. The absence of formal strategies, tools, and mechanisms for CSO engagement in PLS underscores the necessity for an enabling regulatory and institutional environment to facilitate such engagement.

3. Lastly, this research identified the underlying challenges associated with CSO engagement in PLS, such as an inadequate regulatory and institutional framework for CSO engagement, lack of legislative support and partnership, adequate funding and resources, and inadequate training and awareness, further highlighting the need for enhanced collaboration and support mechanisms.

In conclusion, Civil society organisations are integral to the post-legislative scrutiny process. They enhance democratic governance by ensuring that laws remain relevant, effective, and aligned with the needs of the people. While they face challenges, their continued involvement is crucial for fostering accountability, transparency, inclusiveness, and effectiveness in PLS processes. The findings underscore the need for strengthened support and collaboration between CSOs and the legislature to optimise the benefits of post-legislative scrutiny.

## **5.2 Recommendations**

Based on the above findings, the following recommendations are made:

1. This research recommend that the Legislators should explore formal citizen platforms, such as CSOs, to access independent, people-centric relevant data, enhance citizen engagement and ensure transparency in the post-legislative scrutiny process. CSOs Involvement would ensure that legislative committees prioritise citizens' perspectives, experiences, and feedback in the post-legislative process, thereby ensuring laws are beneficial and effective in meeting societal needs, thereby shifting the current top-down

approach of post-legislative scrutiny towards a more inclusive, deliberative and bottom-up process.

2. The research also recommend that the legislature, in collaboration with CSOs, should establish formal mechanisms for CSO engagement by creating regulatory and institutional frameworks to integrate CSOs into the PLS process. This includes introducing or amending relevant legislation, rules, and standing orders of the House to formally recognize and facilitate CSO involvement in the PLS process. Additionally, formal partnerships, such as Memoranda of Understanding (MoUs) or formal agreements between the legislature and CSOs, should be developed to ensure a structured partnership. These frameworks should mandate CSO participation and clearly define their roles and responsibilities to ensure meaningful involvement.

Additionally it recommends reviewing and activating existing structures, such as committees, consultations, and public hearings, Additionally, existing structures should be reviewed to ensure active and effective CSO involvement in PLS. Legislative committees can utilize structures like committees, subcommittees, consultations, round table discussions, public hearings, and petitions to ensure CSO engagement.

This could also include reactivating and empowering the civil society liaison office in the National Assembly to focus on PLS activities, to facilitate structured collaboration between CSOs and the Legislature. Where necessary, new liaison offices should be established specifically to foster collaboration between CSOs and the legislature on PLS activities. Additionally, joint or dedicated committees or task forces comprising CSO members and legislators should be formed to work on specific PLS initiatives. This will

enable CSOs to actively participate in scrutinizing laws, enhance public outreach, and strengthen parliamentarians' engagement with their constituencies.

3. Lastly, this research recommends educating both CSOs and legislators about their potential contributions and the need for collaboration in the post-legislative process is essential. Regular training workshops and seminars should be organized to build their capacity in PLS processes, legislative oversight, data collection, analysis, and tools for tracking and monitoring law implementation. Joint training programs for CSOs and legislative staff should be developed to foster mutual understanding and cooperation. The National Institute for Legislative and Democratic Studies (NILDS) can address these training needs.

Furthermore, standardized frameworks and tools for CSOs to systematically collect and analyze data on the real-world impacts of legislation should be developed to provide lawmakers with evidence-based insights from diverse societal segments. Lastly, CSOs should increasingly look inward for internal sources of funding and avoid inflexible funding sources. Foreign donors should encourage CSO advocacy and activism in areas Of legislative scrutiny.

In conclusion, the involvement of civil society organisations in post-legislative scrutiny is crucial for enhancing the democratic process and ensuring that laws are effective, relevant, and aligned with the needs of the people. By implementing the above recommendations, the legislative process can become more inclusive, transparent, and responsive. Strengthened collaboration between CSOs and the legislature will optimize the benefits of PLS, fostering accountability and improving the overall quality of law and governance.

### **5.3 Contribution to Knowledge**

This research emphasises the necessity for a more inclusive, effective, and bottom-up approach to post-legislative scrutiny (PLS) to ensure laws benefit citizens and fulfil their intended purposes. The research critically examines the existing formal and informal approaches to PLS, as identified in the existing literature. It highlights the predominance of a top-down approach, where primary actors like the Legislature/Parliament and government MDAs dominate the process, leaving little room for independent actors, including citizens, to participate in the actual PLS process.

This research expands the idea of post-legislative scrutiny shifting from the existing top-bottom approach and practice of post-legislative scrutiny to ensure a more deliberative, inclusive, or 'bottom-up' in nature approach. Even though MDAs can present accurate data on the implementations of laws and make attempts to give reports on their impact, in actual reality it is only the beneficiaries of laws and their representatives that can give realistic feedback on the impact of this law. While the research by Moulds, S. & Hooi Khoo (The role of the people in post-legislative scrutiny: Perspectives from Malaysia and Australia.) Points out the roles of people in post-legislative scrutiny, it is not exhaustive and fails to establish an effective link through which Citizens can participate in PLS and through which legislators can access citizens' opinions, perspectives, and feedback on the impact of laws, additionally, it fails to consider other key independent actors like CSOs in the democratic governance system and the contributions they can make to PLS.

In this regard, this research attempts to fill these gaps, by exploring the necessity of involving primary and independent actors in the PLS process in Nigeria and other parliaments worldwide to ensure laws are inclusive, relevant, and effective in serving public needs, this will help to re-



direct the laws for societal growth and development. This research significantly contributes to the existing literature in this field by pointing out the potential of Civil Society Organisations as important actors and partners in the Post Legislative Scrutiny process. It underscores their ability to bridge the gap between parliament and citizens by providing valuable citizen data, perspectives, experiences, and feedback on the impact of legislation, thus addressing a notable deficiency in the PLS process.

By identifying the role of civil society organisations at the post-legislative stage of law-making and the need for civil society organisations' involvement as primary independent actors to ensure effective post-legislative scrutiny. This research points out to the legislators; the need and impact of civil society organisations' engagement in promoting transparency in the PLS process and ensuring inclusive, relevant, and effective legislation, making sure laws are beneficial to citizens and contributing to societal development. This would also build public confidence in the process and improve the overall quality of governance.

Lastly, this research explores and suggests mechanisms, strategies, and tools that can be adopted to ensure that stakeholders are properly engaged to enable a more inclusive and post-legislative scrutiny process and identify and offer solutions to underlying challenges hindering CSO involvement in PLS.

#### **5.4 Areas of Further Research**

The practice of Post Legislative Scrutiny is a continuously evolving concept, with numerous unexplored areas. Given its novelty, particularly in many African Parliaments, there is a pressing need to continually assess the effectiveness of current PLS approaches and practices to enhance them further. Consequently, further research should delve into the practice of PLS within

parliaments around the world, examining case studies of attempts of Civil Society Organisations and citizen engagement in the post-legislative scrutiny process, specifically how such engagement could impact the existing approach or practice of post-legislative scrutiny. This would provide practical context and concrete evidence or examples to support this research.

## **5.5 Conclusion**

The practice of post-legislative scrutiny is essential for ensuring the effective implementation of laws and their beneficial impact on citizens, by meeting the evolving needs of the society. PLS has the potential of enhancing the overall quality of laws and governance generally, however, for PLS to meet its objectives, even the process of PLS itself must be effective.

The existing approach to post-legislative scrutiny focuses on legislators and government MDAs as primary actors in the PLS process, yet, if laws are truly meant to serve citizens, their perspectives, experiences, and feedback are crucial and should be considered in the PLS process, this necessitates the adoption of a more bottom-up and inclusive approach to Post legislative scrutiny.

Lastly, given the strategic position of CSOs, their direct engagement with the beneficiaries of laws, and their roles as intermediaries and representatives of citizens; CSOs are well-placed to provide valuable insights and feedback on the impact of laws. Therefore, bridging the gap between the Legislators and citizens in the PLS process, shifting the existing approach from a top-down approach to a more bottom-up, inclusive, and effective approach.

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