

**POST-LEGISLATIVE SCRUTINY IN NIGERIA: LESSONS FROM
UNITED STATES PRACTICE**

BY

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MAY, 2023

DECLARATION

I declare that this dissertation work titled “**Post-Legislative Scrutiny in Nigeria: Lessons from United States Practice**” is entirely my work and has not been previously presented either in part or whole to this University or any other academic institution for any degree or programme, and that all the sources used have been duly acknowledged by proper references.

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CERTIFICATION

I hereby certify that this dissertation titled “**Post-Legislative Scrutiny in Nigeria: Lessons from United States Practice**” was carried out by Ms. Olabisi Omolayo IRINOYE with Matric No-PG/NLS/2015020 under my supervision. It is further certified that this dissertation has met the minimum acceptable standard of the one of the requirements for the award of Master of Laws (LLM), University of Benin/ National Institute of Legislative and Democratic Studies.

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DEDICATION

This research work is dedicated first; to the Almighty God, who gave me the strength to go on throughout the programme and I particularly dedicate this work to the memory of my father, The Honourable Justice (Prince) Timothy Akinrodola Irinoye of the defunct Gongola State Judiciary. I also cannot forget my loving mother (Aya Oba) Mrs. Florence Ademidun Irinoye who stood by me throughout the programme with her endless prayers and support. Love you Mummy.

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The Leahy Laws- Section 620M of the Foreign Assistance Act of 1961, 22 U.S.C. 2378d;

Section 362 of Title 10 of the U.S, Code.

LIST OF ABBREVIATIONS

CARES	The Coronavirus Aid, Relief, and Economic Security.
CFRN	Constitution of the Federal Republic of Nigeria.
CG	Comptroller General of Customs
COC	Congressional Oversight Commission
FEC	Federal Executive Council
LFN	Laws of the Federation of Nigeria.
LRC	Law Reform Commission
MLA	Member of the Legislative Assembly
NASS	National Assembly
NGO	Non - Governmental Organization
NILDS	National Institute of Legislative and Democratic Studies.
NWLR	Nigerian Weekly Law Report.
NCLR	Nigerian Constitutional Law Report.
PLR	Law Pavilion Report
PLS	Post-Legislative Scrutiny.
PRAC	Pandemic Response Accountability
SC	Supreme Court.
SIGPR	Special Inspector General for Pandemic Recovery
USA	Unites States of America.
WFD	Westminster Foundation for Democracy

ABSTRACT

This research undertook an analysis of the role of post-legislative scrutiny in Nigeria; lessons from United States Practice. The objectives are to understand the role of post legislative scrutiny in legislative practice and procedure in Nigeria; to determine the impact of post-legislative scrutiny on legislation; to identify the challenges to the application of post-legislative scrutiny; and develop the means of improving the understanding and practice of post-legislative scrutiny in Nigeria. The essence of this study is to address the lack of a general mechanism put in place for post legislative scrutiny in the Nigerian legislative cycle.

The research used both primary and secondary sources of data. The Primary sources include the Constitution of the Federal Republic of Nigeria, 1999 (as altered) , Senate Standing Order, 2015 (as amended), Standing Orders of The House of Representatives, Tenth Edition, The Coronavirus Aid, Relief, and Economic Security Act, 2020 (CARES ACT) and the Leahy Laws. Secondary sources include books, opinions of scholars, articles, materials from the internet, case law and journals. This methodology was used because it focused on a thorough enquiry of legal concepts, values, principles, and existing legal theory to analyze each objective. Fiscal discipline and accountability is a major

The research found out that post-legislative scrutiny has contributed greatly to the thorough implementation of laws especially in the United States of America through the oversight functions of the legislature. The implication of the findings for objective one is that post legislative scrutiny plays a major role by ensuring that there are checks and balances in legislative scrutiny, the implication for Objective two would enhance accountability, transparency and functionality of laws in public offices especially on the part of the ministries, departments and agencies of government, the implication of identifying the challenges in

Objective three is that the clear reporting systems imbedded in the CARES Act would address these challenges faced in Nigeria while, the implication of findings for objective four would be the use of trainings and advocacy by the management of the National Assembly and the National Institute For Legislative and Democratic Studies to breach the gap created in the Nigerian system thereby developing the means of improving the understanding and practice of post-legislative scrutiny in Nigeria.

The research recommended that the National Assembly should focus on implementation of laws as they do on passage of laws; Law makers may imbed reporting requirements within a single legislation in the process of law making as can be seen from the CARES Act, 2020 and the Leahy Law. Furthermore, the management of the National Assembly and the National Institute of Legislative and Democratic Studies (NILDS) may organize workshops/retreat for legislators on the importance of the legislative process which ends with implementation of the law and not assent by the president, at the beginning of each legislative session. This research also recommended that the management of the National Assembly may work hand in hand with legislators to develop an organized system of oversight (scrutiny procedure with particular focus on post-legislative scrutiny); laws already passed but not implemented are to be identified and thoroughly scrutinized by the Law Reform Commission; and the Executive should give the legislature a free hand in carrying out its oversight functions.

CHAPTER ONE

1.1 Background of the Study

Law making is indeed a major function of the legislature and important because it allows for the creation and enforcement of rules and regulations that ensure public safety, protect individual right and promote social and economic welfare. It is necessary for the legislature to ensure that laws made are of good quality and it should be noted that this role of the legislature does not end with adoption of a legislation but extends to the entire legislative cycle. The legislative cycle can be divided into two parts: Ex-ante scrutiny and Ex-post scrutiny. Ex-ante scrutiny involves identification of the need for legislation, legislative revision, or amendment; proposal or pre-legislative scrutiny; consideration and adoption by the legislature while Ex- Post scrutiny involves law implementation by government and executive agencies and post-legislative scrutiny¹.

Post-legislative scrutiny, which is the crux of this study is the last lap of the legislative cycle, where the questions of the fate of a legislation after assent, the extent of achievement of policy objectives, unexpected impacts, improvement of implementation and delivery, and lessons from the legislation are asked.

These post legislative issues necessitate this study which undertakes an analysis of post-legislative scrutiny in Nigeria and lessons from United States practice. The Relevance and functionality of a law is central to its effectiveness. It amounts to a waste of time of the

¹ Mousmouti, M, Westminster Foundation for Democracy 'Post-Legislative Scrutiny as a tool for Effective Service Delivery and Positive Public Perception of the Legislature' 2020, <https://www.wfd.org/approach/post-legislative-scrutiny/>

legislature where a legislation is ineffective. However, where a bill goes through the rigorous procedure of enactment, duly passed into law and functional it can be said to have achieved the purpose for which it was made.

Parliaments worldwide effectively pass laws; but most of them tend to shift their attention to other new political or legislative measure once a law has been passed and hence, no attention is given to laws passed to monitor its implementation. Parliamentarians give a lot of their time, energy and resources to the process of adopting legislation and it is not uncommon for them to overlook the review of implementation of legislation. Implementation of legislation has a lot of intricacies, including release of resources among other things².

Over the years, parliaments worldwide started paying more attention to implementation of legislation and began to also focus on post-legislative scrutiny³. Post legislative scrutiny is the ability of the legislature, through its committees, to scrutinize and evaluate the effects and consequences of a law after it has been passed into law⁴. It allows the legislature to scrutinize the impact and effect of laws passed by the legislative arm of government and it underpins the critical role that legislatures can play in the lives of its citizens by providing a mechanism for those affected. This can be considered in two broad ways: first, the enactment of the law to see whether the legal provisions of the law have been brought into force. Second, it considers the impact of legislation to ensure that what the legislature intended is met but also creates avenues for improvement in delivery. It also makes provision for lessons that can be learnt and best practices.

² Westminster Foundation for Democracy, Post-Legislative Scrutiny in the Americas, Prepared for the ParlAmericas-WFD seminar on Post-Legislative Scrutiny, Quito, Ecuador, March 2019.

³ Philip Norton (2019) Post-legislative Scrutiny in the UK Parliament: adding value, The Journal of Legislative Studies, 23;3, 340-357, DOI:[10.1080/13572334.2019.1633778](https://doi.org/10.1080/13572334.2019.1633778)

⁴ Global Partners Governance, 2017, Guide to Parliaments, Publication design by Joe Power.

Post Legislative Scrutiny is an important aspect within the oversight and legislative role of the legislature. It focuses on making result-oriented laws; this is important because in cases where bills are poorly drafted or contains mistakes or problems, it will lead to lack of effective implementation of the legislation⁵.

In several countries laws are introduced, debated, and voted for but they are unfortunately not applied. Secondary legislation can also be adopted but there is no available data to be adequately informed of the implementation state of a law. This process of reviewing the implementation of legislation is constantly overlooked and hence the failure of the functionality of laws especially in Nigeria. It is out of this concern that this study undertakes to examine an analysis of post-legislative scrutiny in Nigeria and lessons from United States practice because both countries practice a presidential system of government.

1.2 Statement of the Problem

Section 4 of the 1999 Constitution empowers the legislature to make laws for the peace, order and good government of the nation. This responsibility extends to them ensuring that the laws made achieve the purpose for which they were made but often, legislators focus more on getting bills passed and signed into law. Some school of thought believe that politicians are more interested in the quantity of bills passed, which is in a bid to tell their constituents that they have passed large number of bills to garner more votes to return their seat. They do not bother with what happens with the law afterwards and this is a major problem because it is at the stage of implementation; monitoring and evaluation, that we can determine the functionality of a law.

⁵ Cargill, T. A critical analysis of post-legislative scrutiny in the UK Parliament, 2019, Publisher: Newcastle University.

There is generally no mechanism set in place for post-legislative scrutiny in the Nigerian legislative procedure. With the legislative cycle in the Nigerian system ending with the assent of the President, it therefore raises the question of how we can mandate our legislators to consider it their responsibility to also ensure that laws made are not abandoned, in addition to safeguarding against quantity of bills passed rather than quality, thereby enhancing accountability and good governance.

1.3 Research Questions

This research work attempts to answer the following questions –

1. To what extent will the understanding of post-legislative scrutiny improve the impact of legislation?
2. What are the impediments to the understanding of post-legislative scrutiny?
3. How can post legislative scrutiny be imbedded in our laws as a mechanism?
4. How to develop the means of improving the understanding and practice of post legislative scrutiny in Nigeria.

1.4 Aim and Objectives of the Study

The aim of this research work is to analyze the role of post legislative scrutiny.

The objectives of this work are to:

1. Understand the role of post-legislative scrutiny in legislative practice and procedure in Nigeria.
2. Determine the impact of post-legislative scrutiny on legislation.
3. Identify the challenges to the application of post- legislative scrutiny.

4. Develop the means of improving the understanding and practice of post legislative scrutiny in Nigeria.

1.5 Significance of the Study

This study is useful to the development of the functionality of laws in Nigeria and the world at large. It would improve the understanding of the role of post-legislative scrutiny in policy and law making. The study will also add to literature on the importance of post- legislative scrutiny and serve as a relevant reference material to those who wish to undertake a study on a subject similar to this. It is useful to legislators, students, research institutions, policy makers and other stakeholders engaged in legislative research, practice and procedure.

1.6 Scope of the Study

The study focused on practice in Nigeria and the United States of America. It gives an opportunity to learn from the practice of the reporting mechanism imbedded in the CARES Act and the Leahy Laws.

1.7 Limitation of the Study

This study addressed the gap in the legislative cycle, which leaves out post-legislative scrutiny, the most critical part in the legislative cycle. Consequently, the study is apt as it addresses this gap, its effect and impact of legislation on the society. This research work suffered some challenges such as lack of research materials on the particular area of study. It is a grey area and the researcher did not find a single Nigerian author who had written elaborately on the subject. However, a couple of foreign authors/researchers have shown interest in post-legislative scrutiny and have written some articles which are available on the internet. Some of these authors are - Franklin De-Vrieze, Philip Norton, Helen Xanthaki among others. The researcher equally

suffered a setback arising from lack of adequate funding as there was no means of travelling to the U.S to get firsthand information from the United States Congress; which would have given the researcher more insight and knowledge to the research work. To overcome this, the researcher had to use the material available on the internet and focused on the work of available authors on post-legislative scrutiny.

1.8 Research Methodology

The research method used by the researcher in the analysis of the research topic is doctrinal. Doctrinal research borders on the exposition of the rules governing a particular legal theory, analyzes the relationship between the rules, explains areas of difficulty and sometimes predicts future developments. This refers to research based on available literature, which involves analysis of judicial and statutory provisions. It covers use of both primary and secondary sources, by application of the power of reasoning.⁶ Adopting the doctrinal research, this study uses both primary and secondary source materials.

Doctrinal research focuses on textual content of the law put to test against a principle of law and sound reasoning unlike non-doctrinal, it does not rely on empirical data. It does not need external evidence to gain validity but whether a particular principle, rule of law, judicial pronouncement can be logically justified within the context of law or legal system to which the principle applies.

The rationale for using this methodology is because it focuses on a thorough enquiry of legal concepts, values, principles and existing legal texts such as statutes, case law, and other legal sources.

⁶ MOU Gasiokwu, *Legal Research and Methodology* (Enugu Chenglo Limited 2007). P 13

The researcher used primary and secondary sources of data such as statutes, articles, case laws, textbooks and other literature materials on the subject matter. These materials were used because the research is doctrinal.

1.9 Organizational Layout

This research work is organized into five chapters for a better understanding of the subject matter. The focal point of chapter one is on general introduction of the nature and scope of the research such as background of the study, statement of the problem, aim and objectives of the study, research questions, significance of the study, scope and limitation of the study, and research methodology. The purpose of this is to give a general introduction relating to the research topic and state the problems or issues that led to this research, which is an analysis of post- legislative scrutiny in Nigeria and lessons from the United States Practice.

Chapter two focused on literature review which includes legal and conceptual framework, historical development of post-Legislative scrutiny and reviews on related literature.

The research reviews the literature of scholars relevant to the research, the legal framework gives insight into the laws that are relevant to the topic and conceptual framework which defined the concept in which words or phrases are used in the research. The theoretical framework focuses on the different views relevant to the research topic and there is also a bit of historical development of post-legislative.

Chapter three discussed the legislature and the role of post-legislative scrutiny. This looked briefly at the legislature as a law making power and the role of legislative scrutiny in governance, in the judiciary and even on the society.

Chapter four focused on the Role of post-legislative scrutiny in law making and Lessons from the United States of America. The general purpose is to learn from the success story of the United States Congress with focus on The CARES Act and the Leahy Laws. It also considered the challenges in the Nigerian system.

Chapter five contains findings, conclusion, and recommendations. This Chapter summarized the research work, findings, and recommendations and how the conclusion flow logically from chapter one to chapter four. This in turn ensured the aim or general purpose of the research is achieved.

CHAPTER TWO

CONCEPTUAL, LEGAL, HISTORICAL DEVELOPMENT AND LITERATURE

REVIEW

This chapter focused on the conceptual and legal framework of post-legislative scrutiny. It also considered its historical development and related literature review.

2.1 Conceptual Framework:

An attempt at the definition of scrutiny must be made to get a clear picture of what post-legislative scrutiny means. Scrutiny means close, searching examination⁷, involving the examination, investigation or inquiry into an activity or person⁸. Scrutiny in the legislature will need designated structures, resources, and practices to function effectively within a particular constitutional framework⁹. Scrutiny is also defined as the action of looking searchingly at something or as an investigation or critical inquiry¹⁰ but it can also be described as the activity by one elected or appointed organization or office examining and monitoring all or part of the activity of an institution¹¹. Scrutiny as a word is defined further to mean to examine with care and with detail. Scrutiny in the past had been associated with accountability and responsibility. They were used to enhance the understanding of scrutiny in the legislative arm of government.

⁷ The Webster's Dictionary of the English Language, International Edition, 2004. Published by Lexicon Publications, INC

⁸ Caygill T, A Critical Analysis of Post-Legislative Scrutiny in the UK Parliament, 2019. Publisher: Newcastle University.

⁹ Maer and Sandford, The development of scrutiny in the UK: A review of procedures and practice, January 2004. The Constitution Unit.

¹⁰ The Law Commission, Post-Legislative Scrutiny, LAW COM No 302

¹¹ Centre for Public Scrutiny as quoted by Maer and Sandford, The development of scrutiny in the UK: A review of procedures and practice, January 2004. The Constitution Unit.

2.1.1 Accountability

This is a process of giving account of one's stewardship to a higher body and this higher body will then have the power to act on the information given¹². Accountability in the legislative arm of government can be expressed through committees, who hold the executive arm accountable for their responsibilities. Oral evidence given by the executive during committee sessions serves as the foundation for conducting scrutiny though this information needs to be timely and sufficient. It establishes a relationship between them¹³ although accountability as a concept is not intrinsic to post-legislative scrutiny, it is prevalent within it through post-legislative scrutiny being undertaken by committees.

Control and power in accountability add to scrutiny and this often involves three stages which are the obligation to inform, right to interrogate/investigate¹⁴ and right to pass judgment¹⁵. This stages establishes the fact that scrutiny has a monitoring role and lack of ability to seek and access information limits the power of investigation.

The principal agent theory can be used to further explain accountability in scrutiny since accountability is the control within them. Committees of the legislature are the mechanism put in place to address the power and a lack of control by the legislature, but they do more now than just seek to control or limit the executive¹⁶. Accountability as a concept has a relationship with

¹² Caygill, T. A critical analysis of post-legislative scrutiny in the UK Parliament, 2019. Publisher: Newcastle University.

¹³ Ibid.

¹⁴ Section 88 of the CFRN, 1999.

¹⁵ Caygill, T A critical analysis of post-legislative scrutiny in the UK Parliament, 2019. Publisher: Newcastle University.

¹⁶ Ibid.

scrutiny especially a distinct type called oversight.¹⁷ There is a school of thought that believes that accountability should lead to an improvement in efficiency and the legitimacy of government¹⁸. Scrutiny has different aims and objectives, and one very important aspect is that it must be open and transparent. Scrutiny should be objective and should show value for money by checking power and restraining it. Scrutiny has the capacity to ensure administrative compliance with statutory intent, it should work against dishonesty, and waste, it shall also evaluate implementation in accordance with legislative objectives¹⁹.

Accountability for scrutiny is also necessary in examining governments negotiating position and also in examining its actions though this can only happen when the executive open its doors to legislative investigation.

The importance of the relationship between accountability and scrutiny in legislative parlance cannot be over emphasized because it supports the improvement of processes and outcomes; which also provides the assurance that public resources are used in line with the aims and values of the society. Scrutiny cannot survive without accountability because if it does then scrutiny will become toothless and unable to meet its aims and objectives¹⁹.

¹⁷ Corrigan and Charteris, 1999, Greer and Stanford, 2003, Hull, 2012, Pelizzo and Stapenhurt, 2014, White, 2015b as cited by Thomas Caygill, A critical analysis of post-legislative scrutiny in the UK Parliament, 2019. Publisher: Newcastle University.

¹⁸ Bovens, 2007, Boven et al, 2008, Flinders, 2001 as cited by Thomas Caygill, A critical analysis of post-legislative scrutiny in the UK Parliament 2019. Publisher: Newcastle University.

¹⁹ Caygill, T A critical analysis of post-legislative scrutiny in the UK Parliament, 2019. Publisher: Newcastle University.

¹⁹ Ibid.

2.1.2 Responsibility

Responsibility also has a relationship with accountability and scrutiny; the trio must work together for scrutiny to be impactful. The definitions of responsibility by different scholars will also help our understanding of scrutiny.

A scholar called Thomas in 1998 defined responsibility in three different ways; he says that responsibility is ‘an agency in which an actor is given a goal and the power to cause events to occur and is guided by a sense of obligation’. His second definition is ‘an authoritative relationship in which an agent is answerable to a principal for performance and is subject to sanctions for failure’. His final definition says responsibility is, ‘an obligation that is moral and separate from the authoritative relationship’²⁰. This definition in one and three points towards duty/obligation because a person is responsible for the work carried out while definition two shows that if a person is answerable to a principal, then the person is obligated to provide answers.

Another scholar “Stabell in 2014 described responsibility as the obligation to make up or to compensate for the harm done through one’s own fault²¹. In line with views above, the study also views responsibility as the act of being responsible or of being accountable to a higher authority.

In the United Kingdom, the concept of responsibility can be seen through the perspective of ministerial responsibility which allows the legislature to hold the executive accountable. This clearly shows that responsibility is a necessary component of accountability.

This ministerial responsibility can be seen from two different angles-

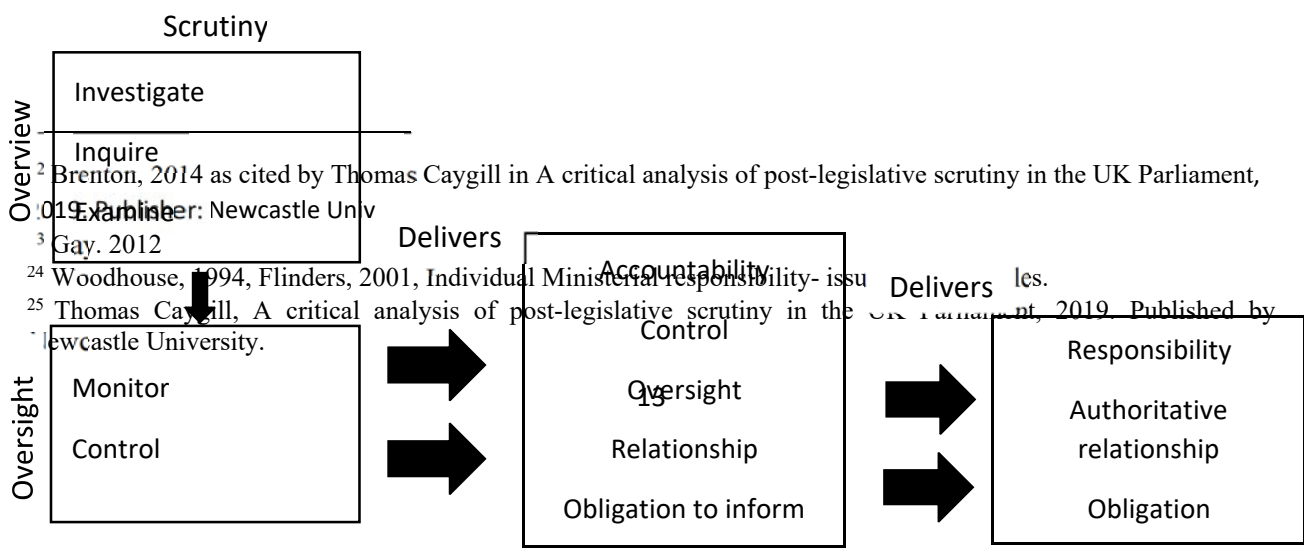
²⁰ Caygill, T. A critical analysis of post-legislative scrutiny in the UK Parliament, 2019. Publisher: Newcastle University.

²¹ Ibid

- a) Individual ministerial responsibility which mandates the minister to be responsible for all actions under the minister's department; and
- b) Collective ministerial responsibility is a convention which allows cabinet and junior ministers to support government policies in public and in the legislature. Where this convention fails then the offending minister will have to resign²² although resignation is a last resort. The alternative will be for the minister to inform or explain, apologize or take action²³.

The legislature looks at ministerial responsibility from the angle of sovereignty of the legislature especially legislative committees who see ministerial responsibility as its inherent right to scrutinize and control government while the government sees it literally²⁴ as providing answers and in no way constraining or sanctioning it. This reveals that the legislature and government give different meanings to responsibility and to scrutiny. Responsibility basically has a relationship with accountability and it is this relationship that has led legislative committees to find new routes to influence and scrutinize government. Hence, the need for post-legislative scrutiny.

The table below helps with the understanding of the concepts and the relationship between scrutiny, accountability, obligation and responsibility in the U.K Parliament²⁵-



This literature on accountability touched upon responsibility and the literature on responsibility noted that it was an obligation and an authoritative relationship. It can therefore be said that it is through accountability that responsibility is delivered through scrutiny. Scrutiny is the vehicle through which accountability is delivered²⁶.

2.1.3 Effectiveness

Effectiveness is another concept that is related to post-legislative scrutiny, which requires consideration for ease of understanding. It is widely embraced as a measure of legislative quality by international and national lawmakers, and academic and professional drafters. Effectiveness is a measurement used to measure the aftermath of legislation as a good law is simply one that can contribute to the production of the desired regulatory results²⁷. Effectiveness can also be defined as the capacity of a legislative text to contribute to regulatory efficacy. It measures the possible success of the expression of regulation in a legislative text. But the success of expression is only relevant if there is success in the content of the regulation²⁸

²⁶ Ibid.

²⁷ Xanthaki, H. An enlightened approach to legislative scrutiny: focusing on effectiveness, Published online by Cambridge University Press: July 16, 2018.

²⁸ Ibid.

Efficacy is the extent to which regulators achieve their goals and this is the goal for any regulation. For example, if the aim of the regulation is to reduce the number of illegal abortions within a jurisdiction, efficacy is easily assessed by data setting the number of illegal abortions before and after the regulation was put to place. A reduction in the number of illegal abortions proves efficacy of regulation, whereas an increase or plateau in the numbers of illegal abortions points to inefficacy. Efficacy requires an accurate identification of the policy aim behind regulatory aspirations. A wonderfully drafted law cannot possibly contribute to the production of the desired regulatory results, if the choice of regulatory mechanism is haphazard and consequently doomed to miss its target from the word go²⁸.

Effectiveness is a strong standard by which legislative quality is judged and it applies to all types of legislative instruments. Where the purpose of legislation is to serve as a symbol, then effectiveness becomes the measure of achieved inspiration of the users of the symbol legislation. Where legislation is to be used as a ritual, effectiveness takes the robe of persuasion of the users who bow to its appropriate ritual. If legislation is functional, effectiveness measures the extent of the production of the desired regulatory results. Effectiveness is nurtured by clarity, precision, and unambiguity²⁹.

The effectiveness test as clearly stated by Mousmouti focuses on objectives, content, context, and results³⁰. Where purpose tests the link between the purpose of the law and the policy objectives, content tests the responsiveness of the legislative choices to the underlying social phenomenon, and the consistency and alignment between the choice of rules, enforcement mechanisms and

²⁸ Ibid.

²⁹ Ibid.

³⁰ Mousmouti M, 'Operationalising Quality of Legislation through the Effectiveness Test' (2012) as cited by Prof. Helen Xanthaki, *An enlightened approach to legislative scrutiny: focusing on effectiveness*. Published online by Cambridge University Press: July 16, 2018

communication. Results test the monitoring mechanisms in the law and context tests the integration of the new legislation within the existing system of laws. The value of the test lies in its originality as the first test of effectiveness, and its innovative concretization of effectiveness. The test is an excellent tool in scrutinizing legislation and is envisaged to be used along with the existing toolkit of legislative evaluation.

Effectiveness demands answers to the following questions in a consecutive order for postlegislative scrutiny to survive-

- a. Which were the desired regulatory results pursued by means of the legislation?
- b. Has the selected regulatory mechanisms led to the desired regulatory results, as evidenced by empirical data?
- c. Has the legal mischief been addressed by new legislation, as evidenced by data?
- d. Were there any issues arising from the choice of legislative expression and how can these be addressed?
- e. Is efficacy achieved?
- f. If not, was the legislation effective as evidenced by c and d?
- g. If not, how can the issues be addressed: repeal, repeal and re-enact, amend the legislation?
- h. In how many years does the legislation need to be re-evaluated?

All actors in the regulatory process and necessary toolkits of legislative scrutiny must be available to answer these questions. This could serve as the internal and external evaluation stage of

Thornton's stages of the drafting process and could be used as the starting point for post legislative scrutiny³¹.

2.1.4 Post-Legislative Scrutiny (PLS)

The concept of scrutiny is clearly understood from the above but over the years this understanding changed to focus more on open and transparent government. This occurred because of different scandals that rocked different governments which focused on policies that failed and also on the need to hold those who made mistakes accountable in order to avoid the occurrence of such mistakes. Post-legislative scrutiny is an examination of a body/ government in relation to the legislation that they have made and implemented which can also include policy development.

Monitoring the implementation of legislation or policy development is critical to post-legislative scrutiny and the outcome of such inquiry can either lead to no necessary action needed or information gathered can be used by the courts or to amend legislation. Monitoring, access to and gathering of information is crucial for scrutiny to effectively occur.

Post-legislative scrutiny refers to the scrutiny of a legislation at least three years after it has been passed into law to ensure that the policy objectives of the law have been met effectively³². The role of the legislature in countries where democracy is practiced is law making, representation and oversight but post-legislative scrutiny is now the emerging trend in the oversight role of the legislature. Lord Philip Norton posited that it may be seen as a public good; fashioned to ensure

³¹ Xanthaki, H An enlightened approach to legislative scrutiny: focusing on effectiveness. Published online by Cambridge University Press: July 16, 2018

³² Ibid.

measures of public policy to deliver on what the representatives of the people voted for³³. Post-legislative scrutiny focuses on two basic aspects, and they are: first that the legal provisions are in force and secondly that the intended policy outcomes have been met. This will strengthen future policy, develop the legislature, and allow legislators to carry out the full circle of the legislative process.

Post-legislative scrutiny goes beyond just inquiry or examination, it must be for a crucial purpose. The result of post-legislative scrutiny in an effective legislative process starts with the legislative scrutiny of the principles and objectives of a piece of legislation and this takes us to the definition of post-legislative scrutiny as defined by The English Law Commission, in its report as -

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

b. **Law Making:** this is simply the process of making laws or regulations that guide the activities or the daily lives of people which includes instruments which have binding effect on the people. The power of the National Assembly to make laws shall be expressed through bills

³³ Franklin De Vrieze (2020) Post-Legislative Scrutiny in Europe: how the oversight on implementation of legislation by parliaments in Europe is getting stronger, *The Journal of Legislative Studies*, 26:3, 427-447, DOI: 10.1080/13572334.2020.1780012 or <https://doi.org/10.1080/13572334.2020.1780012>

passed by both Houses of the National Assembly³⁴. This process of the legislature has different stages that must be complied with before a law can be made; the first stage, second stage, committee stage and third stage. A bill must pass through all the stages in both houses of the National Assembly for the purposes of concurrence before it is sent to the President for assent and once assented to; it becomes law.

c. **Representation:** Nigeria practices a bicameral legislature at the federal level and the constitution provides that the senate shall consist of three senators from each state and one from the federal capital territory making a total of 109 members in the Senate³⁵ and the House of Representatives shall also consist of three hundred and sixty members representing different constituencies in the federation³⁷. These members are elected to represent the collective interests of their constituents, they hold the executive accountable for their actions and they propose bills which if passed become law.

d. **Oversight:** focuses on vetting or over-sight over the activities of other branches of the government, especially the executive branch. Section 88 of the 1999 Constitution clearly gives power to the National Assembly to conduct investigation into such activities and section 128 of the same constitution gives power to the State Houses of Assembly to also conduct investigations³⁶. The Federal legislature as well as her state counterpart have the power to conduct investigations and any matter within the competence of the legislative arm of government is subject to scrutiny, criticism and investigation³⁷. The oversight function of the legislature is perhaps the most dynamic and challenging because it is a continuous process. It is

³⁴ Section 58, 1999 Constitution of the Federal Republic of Nigeria.

³⁵ Section 48, CFRN, 1999. ³⁷
Section 49, CFRN, 1999.

³⁶ Section 128, CFRN, 1999.

³⁷ Law Quest, The 1999 Constitution made easy, 2nd Edition. Lawquest Publishing Company Limited.

through this oversight function that Parliament holds the government to account on behalf of the people, ensuring that government policies and actions are both efficient and commensurate with the needs of the public³⁸. The Legislature has a responsibility to ensure that legislation is properly passed, Implemented and evaluated to achieve intended outcomes and this act of evaluating laws passed by the legislature is called post -legislative scrutiny.

2.2 Legal Framework of Post- Legislative Scrutiny.

2.2.1 The Constitution of the Federal Republic of Nigeria, 1999 (as altered) (CFRN):

Section 88 of the CFRN makes provision for post-legislative scrutiny by conferring in Subsection (1)(a) on the legislature the power to conduct investigations on any matter in the Exclusive Legislative List and any other matter in the concurrent legislative list set out in the first column of part II of the second schedule while Subsection (1) (b) gives the NASS powers to investigate Federal civil servants, parastatal and ministries. But Subsection 2(a) and (b) limits the purpose of the investigation. The Section provides as follows-

“(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 with respect to which it has power to make laws, and

³⁸ Research and Information Division of Lok Sabha Secretariat, Post Legislative Scrutiny (PLS) – A Dimension of the Oversight Function of Parliament. <https://loksabhadocs.nic.in/Refinput/Research>.

(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 National Assembly, and

(ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

(2) The powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to –

(a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and

(b) 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”.

2.2.2 The Nigerian Law Reform Commission Act, CAP N118, LFN 2004

This Act establishes the Nigerian Law Reform Commission to review all national laws which includes the codification of laws, repeal of obsolete laws, unnecessary legislations, and simplification of our laws amongst others. It is the responsibility of the law reform commission

to propose laws for reform. Law reform is the process of changing laws to meet the needs of the society. It tries to create a better legal environment for the society to function effectively and efficiently, law cannot exist in a vacuum; it must reflect the attitudes and values of the society. Law must undergo constant amendments for it to remain modern, current, and relevant. Law reform is equally relevant to cover loopholes in older legislation, it must seek to adapt to any change in status quo, which might have been caused by the emergence of new technology or sudden departure from any shared social values it had legalized in the past. Law reform is necessary if law is to be relevant to a modern society.

Section 5(1) of the Nigerian Law Reform Commission Act and section 3 of the UK Law Reform Commission Act, 1965 spells out the procedure for reforming a law which also ends up at the National Assembly. This procedure allows the Commission to review existing statute then submits its final report to the Attorney General of the Federation, who then sends it to the Federal Executive Council and upon approval sends to the National Assembly as an executive bill. This means the legislature gets to scrutinize the bill by allowing it go through all the different stages of law making.

It is important to note that law reform does not end with the passage of a new or amended law as strategies for implementation should be outlined. For instance –

- a. mechanism for implementation should be included in the statute even if by delegated legislation;
- b. implementing regulations should be enacted in a timely manner;
- c. support action plan that delegates implementation responsibilities to specific ministries, departments and agencies and that authorize funding for implementation; and

- d. support action plan that incorporates a plan for regulating, monitoring and evaluation of the reformed law.

There are certain agencies that are necessary for this reform and for effective implementation.

These agencies are the courts, the legislature, and the executive, Ministries / Departments/Agencies (MDA's), Non-governmental organizations and Financial Institutions.

- i. The Courts-

- a. The courts are used as a tool for law reform, section 6 of the constitution makes provision for the courts to resolve disputes. For example, in *Mojekwu v. Mojekwu*³⁹, the Supreme Court held that the Court of Appeal went on a voyage of discovery but in *Ukeji v. Ukeji*⁴⁰, the same Supreme Court reformed the law in that respect. Also in *Elelu Habeeb v. Attorney General of the Federation*⁴¹, the court held that a removal of the Judge cannot succeed without the involvement of the National Judicial Commission.
- ii. The Legislature- this is the main arm of government for law reform because even the pronouncements of courts are tied to existing legislation already enacted by the legislature.
- iii. The Executive –
 - a. Section 148(2)a of the constitution provides that the president shall hold regular meetings with the vice president and ministers for the purpose of determining the general direction of domestic and foreign policies of the federal government⁴².

³⁹ 7 NWLR 283 (PT 512)

⁴⁰ (2014) 11 NWLR (PT. 1418) 384

⁴¹ (2012) 40 WRN 1

⁴² Section 148, CFRN, 1999.

b. Ministries/Departments/Agencies-

They implement and initiate policies.

c. non-governmental organizations (NGO's)-

They promote and push for law reforms in different but specific areas even though can sometimes be compromised.

d. international financial institutions-

They also have an effect in law reform. A typical example is the coming into effect of Economic and Financial Crimes Commission and the Independent Corrupt Practices and Other Related Offences Commission.

2.3 Historical Development of Post Legislative Scrutiny.

Post-legislative scrutiny is a new area in legislative practice and procedure but the Constitution Committee of the House of Lords, 2004 in the UK Parliament chaired by Philip Norton; came up with a report on post legislative scrutiny called the Parliament and the Legislative Process (Constitution Committee, 2004). The focus of the committee was to consider whether parliament could play an active role in both drafting, implementation of legislation and how both Houses could be strengthened in scrutinizing and influencing bills once they had been introduced⁴³. The Committee's recommendations on post-legislative scrutiny had a significant effect as it recommended that the scrutiny of legislation should be within three years of their commencement or six years after enactment.

⁴³ Franklin De Vrieze & Philip Norton (2020) The significance of post-legislative scrutiny, The Journal of Legislative Studies, 26:3, 349-361, DOI: 10.1080/13572334.2020.1780008

The committee's report found overwhelming support for post-legislative scrutiny and has since been recognized by different legislatures around the world. What happened in the UK Parliament basically influenced other nations to consider further the use of post-legislative scrutiny⁴⁴.

The UK Westminster Parliament (House of Commons and House of Lords), allows Committees to carry out post-legislative scrutiny which is supplemented by the formal requirement that the government publish a memorandum on the implementation of legislation three to five years after Royal Assent. The Parliament especially the select Committees of the House of Commons goes through the memorandum and the Committee decides whether further inquiry is needed.

Canada practices what is called sunset legislation which empowers the federal parliament to critically look at laws after an established period and re-classify them as temporary. The federal parliament considers these laws and where this consideration shows that the law is still needed then they are recommended for continuation but where they are no longer useful or needed then they are abandoned. A sunset provision or clause is a measure within a statute, regulation that provides that the law shall cease to have effect after a specific date except further legislative action is taken.

However, the South African Parliament engages external experts to examine laws already in existence since non-racialized majority-rule was established in 1994. It allows parliaments who can afford to hire experts to monitor legislative outcomes to do so, this creates public awareness and public participation that encourages post-legislative review.

⁴⁴ Journal of South East Asia, Applying Post-Legislative Scrutiny to the Analysis of Legislation and SDGs in South and Southeast Asia. <https://pdfs.semanticscholar.org/9a1a/e79794d765e>

Another country where the constitution establishes a direct obligation for the parliament to evaluate the effectiveness of the legislation and other measures adopted is Switzerland. The federal parliament set up the Parliamentary Control of the Administration (PCA) in 1991, a specialized service which carries out evaluations on behalf of the Parliament and produces three large reports per year. The PCA has a budget to hire experts and outsource part of the work and its evaluation methods are based on the standards set by the Swiss Evaluation Society and international association⁴⁵.

These parliaments show the need for and importance of post-legislative scrutiny by taking different steps to review laws to ensure effective implementation.

2.4 Literature on Post Legislative Scrutiny (PLS)

It is trite that legislatures concentrate more on the process of adoption of legislation and most times they forget about its implementation process. Politicians in the legislative arm of government often focus on passage of laws as an additional factor to retain their seat in parliament so, it can be on record that they facilitated a good number of bills into law. Implementation of these laws is never priority and does not even happen automatically, if a law is not scrutinized after passage to follow through with implementation it can be completely abandoned. It is obvious that if PLS is allowed to take effect, bills passed into law can be scrutinized effectively to fulfil their objectives even though some factors such as diversion of funds, changes in facts on ground, changes in legal framework of related policy and so on can affect implementation.

⁴⁵ Westminster Foundation for Democracy, Post-Legislative Scrutiny Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance, 2017. www.wfd.org

It is necessary at this point to consider some literature on post-legislative scrutiny however, it is important to state categorically that there is lack of literature on PLS in Nigeria but it has received some literary attention in other parliaments. For instance, the U.K and America.

Akintola A. Jimoh, in his book on Law Practice and Procedure of Legislature does not have a single paragraph on post-legislative scrutiny but focused more on functions of the legislature and the process of initiation of Bills from initiation to presidential assent⁴⁶.

C.O Adubi has also contributed to legislative drafting but he dwelled more on structure of a Bill and how to draft the different parts of a Bill and remained silent on post-legislative scrutiny⁴⁷.

Sylvester O. I wrote on the Principles of Legal and Legislative Drafting in Nigeria but his focus was on the anatomy of Bills which is more of structure and the technical aspect of drafting⁴⁸. He also had nothing to say on PLS.

Adesiyan D.O in his work on legislative drafting focused basically on the procedure for composition of Bills and nothing on post-legislative scrutiny⁴⁹.

Epiphany Azinge is another Nigerian author that wrote on law making under the Military era and yet made no reference at all to post-legislative scrutiny⁵⁰.

Nwosu K.N in 2003 wrote on Law and Practice of the Legislature in Nigeria dwelling on Parliamentary Committees, taking of instructions and improving law drafting in Nigeria.⁵¹

⁴⁶ Akintola ,A. J Law Practice and Procedure of Legislature. Learned Publishments, 1999.

⁴⁷ Adubi, C O. Legal Drafting, Conveyancing Law, Wills and Practice (Light House Publishing Company Limited, 2012)

⁴⁸ Imhanobe, S. O. (2002). Understanding Legal Drafting and Conveyancing. Academy Press Plc, Lagos.

⁴⁹ Adesiyan, D. O. A Handbook on Legislative Drafting (Tenton Books, 1996)

⁵⁰ Azinge, E. Law Making Under the Military Regimes – The Nigerian Experience (Olitz Publishers, 1994)

⁵¹ Nwosu K. N, Law and Practice of the Legislature in Nigeria (Nayee Publishing Company Limited, 2003)

The National Secretariat of Nigerian Legislatures National Assembly published Readings on Developments in the Nigerian Legislature⁵² and concentrated on the role, structure, powers and functions, legislative process, challenges of the legislature and so on but the mention of oversight was more of pre-legislative scrutiny rather than on post-legislative scrutiny.

National Institute for Legislative Studies National Assembly wrote in their book on Committees in the Nigerian National Assembly: A Study of the Performance of Legislative Functions⁵³ and dwelled more on scrutiny and oversight as a function of parliamentary committees, it made mention of supervision and watchfulness of the parliament over executive activities and policy implementation but did not really go into post-legislative scrutiny as a concept.

National Secretariat of Nigerian Legislatures National Assembly published A Handbook on Legislative Practice and Procedure of the National Assembly Revised Edition⁵⁴ edited by E.U Ojogwu and Joshua Wakawa made mention of oversight functions of the legislature in just two pages but did not give an in-depth analysis of it neither did it consider post-legislative scrutiny.

Tonye C. Jaja who has also published different books on legislative drafting did not mention post legislative scrutiny in any of his books but focused more on conventions, principles of legislative drafting, techniques and interpretations. Some of his work include A Dictionary of Legislative Drafting and Law Making Terms; A Lexicon for Drafting Lawyers and Legislators⁵⁵ and Legislative Drafting: An Introduction to Theories and Principles among others.⁵⁶

⁵² The National Secretariat of Nigerian Legislatures National Assembly, Readings on Developments in the Nigerian Legislature, 2011.

⁵³ National Institute for Legislative Studies National Assembly, Committees in the Nigerian National Assembly: A Study of the Performance of Legislative Functions, 2003-2013 Second Edition.

<https://ir.nilds.gov.ng/handle/123456789/63>

⁵⁴ National Secretariat of Nigerian Legislatures National Assembly published A Handbook on Legislative Practice and Procedure of the National Assembly Revised Edition edited by E.U Ojogwu and Joshua Wakawa.

⁵⁵ T.C Jaja, A Dictionary of Legislative Drafting and Law Making terms; A Lexicon for Drafting Lawyers and

Elohor Stephanie Onoge⁵⁷ actually wrote a paper on Monitoring and Evaluating the Impact of Post-Legislative Scrutiny of Emergency Regulation in Response to the COVID-19 Pandemic. The paper examined PLS operationalization in examining emergency regulations passed by the president of Nigeria in response to COVID-19 pandemic which led to human right violations.

The researcher had to also consider some foreign literature since we have little or no literature on PLS in Nigeria and the topic of our research is on a comparative analysis of post legislative scrutiny in Nigeria and the United States of America.

Crabbe V, *Legislative Drafting*⁵⁸ was also reviewed but it is only a leading book on statute law reviewed.

Artre B.R, *Legislative Drafting*⁵⁹ focused on the principles and techniques of drafting such as parts of a bill, the constitution, common phrases and their significance in legislative drafting also nothing on post-legislative scrutiny.

Franklin De Vrieze and Philip Norton⁶⁰ wrote in a journal on Significance of Post-legislative Scrutiny and included the implementation stage as the last stage after the four principal stages of a Bill (gestation, drafting, deliberation and adoption). This new dimension brought in is called post-legislative scrutiny and this occurs at the stage of implementation of a legislation.

Legislators and Legislative Drafting (Lambert Academic Publishing, 2002)

⁵⁶ T.C Jaja. *Legislative Drafting: An Introduction to Theories and Principles*, Wolf Legal Publishers (September 1, 2012)

⁵⁷ E. S Onoge, *Monitoring and Evaluating the Impact of Post-Legislative Scrutiny of Emergency Regulation in Response to the COVID-19 Pandemic*, School of Advanced Study, University of London. Vol. 8 No. 1(2021): Volume, COVID special Issue, Winter 2021 <https://doi.org/10.14296/islr.v8i1.5269>

⁵⁸ V Crabbe. *Legislative Drafting*, published in Great Britain 1993 by Cavendish Publishing Limited, The Glass House, Wharton Street, London WC1X 9PX.

⁵⁹ BR Artre, *Legislative Drafting - Principles and Techniques*, Universal Law Publishing Company, 2006

⁶⁰ Franklin De Vrieze and Philip Norton, *Significance of Post Legislative Scrutiny*, *The Journal of Legislative Studies*, 26:3, 349-361, DOI: 10.1080/13572334.2020.1780008

Jonathan Murphy and Svitlana Mishura⁶¹ in an article on Post-legislative scrutiny in a NonWestminster Parliament; Opportunities, Challenges and Considerations. The article focused on growing interest for strengthening the legislative process and for permitting parliaments to more effectively integrate its legislative and oversight functions. It focused on Ukraine and explored the contest and challenges for effective post-legislative scrutiny.

Franklin De Vrieze and Philip Norton⁶² also wrote on Parliaments and Post-Legislative Scrutiny. The book dwelled on PLS as a public good and the extent to which parliamentarians have the responsibility to monitor how laws are implemented to meet their objectives.

Franklin De Vrieze through the publication of Westminster Foundation for Democracy(WFD)⁶³ wrote extensively on PLS in its book Post-Legislative Scrutiny; A Guide for Parliaments that implementation of legislation is extremely important and the following factors make it imperative for parliaments/legislatures to monitor and evaluate the implementation of legislation in other words post legislative scrutiny which is - 1) to ensure the requirements of democratic governance and the need to implement legislation in accordance to the principles of legality and legal certainty, are being met; (2) to enable the adverse effects of new legislation to be apprehended easily and expeditiously; (3) to support a consolidated system of appraisal for assessing how effective a law is at regulating and responding to problems and events; (4) to support improvements in legislative quality by learning from experience both in terms of what works and what does not, and in terms of the relationship between objectives and outcomes.

⁶¹ Murphy J and Mishura S, Post-legislative scrutiny in a Non-Westminster Parliament; Opportunities, Challenges and Considerations, Eur. JL Reform, 2019-Heinonline

⁶² Franklin De Vrieze, Philip Norton, Parliaments and Post-Legislative Scrutiny, 2020 Routledge

⁶³ Franklin De Vrieze, Post-Legislative Scrutiny; A Guide for Parliaments. Publication of West Minster Foundation for Democracy

Helen Xanthaki⁶⁴ wrote an article on An Enlightened Approach to Legislative Scrutiny: Focusing on Effectiveness to find and express the concrete mechanism of application of the concept of legislative effectiveness to pre- and post-legislative scrutiny.

Tom Caygil. wrote a report on Post-Legislative Scrutiny in the U.K parliament⁶⁵ published by Westminster Foundation for Democracy which analysed the frequency and outcomes of PLS in the U.K Parliament in order to provide an insight into how scrutiny is being undertaken.

Franklin De Vrieze and Fotios Fitsilis⁶⁶ also wrote on post-legislative scrutiny as an emerging oversight technique which is applied by parliaments to scrutinize implementation and impact of specific laws or legal framework.

Mousmouti Maria, made a presentation on PLS as a tool for Effective Service Delivery and Positive Public Perception of the Legislature. She mentioned that the role of parliament does not end with the adoption of legislation but the entire legislative cycle with a focus on ex-post impact assessment of policy objectives.

Franklin De Vrieze and Victoria Hasson wrote on Comparative Study of Practices of PostLegislative Scrutiny in Selected Parliaments and the Rationale for its Place in Democracy Assistance.

Franklin De Vrieze⁶⁷ has written extensively on Post Legislative Scrutiny and in his book on PostLegislative Scrutiny; Guide for Parliaments he introduced PLS as a tool to evaluate whether the laws passed by parliament have achieved their intended outcomes.

⁶⁴ Xanthaki H, wrote a whole article on An Enlightened Approach to Legislative Scrutiny: Focusing on Effectiveness, Published online by Cambridge University Press: July, 2018

⁶⁵ Caygil T, Post-Legislative Scrutiny in the UK Parliament, 2021, published by Westminster Foundation for Democracy

⁶⁶ Franklin De Vrieze, Fitsilis F, Applying Post Legislative Scrutiny to the Analysis of Legislation and SDG's in South and Southeast Asia, 2020. Journal of Southeast Asian Human Rights 4(1):1 DOI:10.19184/jseahr.v4i1.17611

Democracy Plus⁶⁸ wrote in *Post Legislative Scrutiny: International Principles and Oversight in Kosovo* saying that they have good laws in Kosovo but lack mechanism for implementation and hence, post-legislative scrutiny.

Alex Brazier⁶⁹ wrote in his work on *Post-Legislative Scrutiny* and referred to post-legislative scrutiny as a recent innovation which is a guide to parliaments focusing on how PLS can enhance parliamentary and legislative process.

House of Lords Constitution Committee, 2004⁷⁰ introduced post-legislative scrutiny by relating it to motherhood and apple pie in that everyone appears to be in favour of it. However, unlike motherhood and apple pie, it is not much in evidence. PLS is a way of institutionalizing a mechanism or system to improve the quality of legislation passed and a way to ensure that a piece of legislation is fit for purpose.

In conclusion, the researcher observed that most scholars in Nigeria have not averted their minds to all agree on the efficacy, transparency and responsibility of post-legislative scrutiny. They all saw the need and sense in it for legislation to be impactful but the only way to achieve this is by monitoring and scrutinizing legislation to ensure that it achieves its desired results or objectives hence, post-legislative scrutiny.

⁶⁷ Franklin De Vrieze, *Post Legislative Scrutiny; A Guide for Parliaments*, Publication of Westminster Foundation of Democracy

⁶⁸ Democracy Plus, *Post Legislative Scrutiny: International Principles and Oversight in Kosovo* (Publication supported by Konrad- Adenauer Stiftung Office in Pristina)

⁶⁹ Brazier, A. *Post-Legislative Scrutiny*, Hansard Society, 2005

⁷⁰ Richard Kelly, Michael Everett, *Post Legislative Scrutiny*;

<https://www.bing.com/search?q=house+of+lords+constitution+committee%2C+2004&aqs=edge.0.69i64i450l8.154984j0j9&FORM=ANAB01&PC=HCTS#:-:text=Post%2DLegislative%20Scrutiny-.https%3A//researchbriefings.files.parliament.uk/...%C2%A0%C2%B7%20PDF%20file,-Web>

CHAPTER THREE

THE LEGISLATURE AND THE ROLE OF POST-LEGISLATIVE SCRUTINY

This Chapter focused on the legislature and the role of post-legislative scrutiny. It looked critically at the role of post-legislative scrutiny in different areas such as in implementation of laws, in governance, in the judiciary and even on the society.

3.1 The Legislature

Legislature is a term used to describe a body that legislates. Legg means law and Lature means a place for law making, it is an arm of government that formulates the will of the state and gives it legal authority and force. The Legislature is a gathering of elected representatives of the people who represent national public opinions and the power of the people. Parliament is a word used instead of legislature and it is derived from a French word called “parley” which means to talk or to deliberate or to discuss. So parliament simply means a place where deliberations are held. It is that arm of government which performs the function of law making through deliberations⁷¹.

The Legislature or Parliament is a body of persons embowered to make laws for a political entity such as a country or city. The legislature can be traced back to the era of colonialism, national unification exercise or the era of political independence. Every government in the world that has a Constitution creates either a bicameral or a unicameral legislature and the legislature is bound to conform to the constitution as grundnorm. Bicameralism is a system where the legislature has two houses or Chamber like in the case of Russia, France, India, United States, United Kingdom, and Nigeria which has the Senate and the House of Representatives. Unicameralism is the act of

⁷¹ KK Ghai Constitution, Legislature: Meaning, Functions and Types of Legislature.
www.scribd.com/document/328943608/Legislature

practicing a single house chamber like it is done in China, Zimbabwe and Turkey among others. The position in Britain is however different because absolute power is vested in the British parliament to make laws but this power and jurisdiction of the legislature is transcendental. This may however be classified as absolute or limited depending on whether the legislature or Constitution is supreme. It is the responsibility of the legislature to make laws and this power allows them to confirm, enlarge, restrain, repeal and also amend legislations that cover almost all aspects of human endeavour whether civil; criminal; military; health; education; governance and so on⁷². The Legislature is the Chief source of law and is also the mirror of national public opinion and symbol of the power of the people⁷³.

Over a third of world legislatures have witnessed one form of discontinuity or the other at various times and such discontinuity creates interregnum during which the Legislature is dissolved or suspended and other bodies are empowered. This is most common in Africa and particularly in Nigeria that has experienced several military coups which has adversely affected the development of constitutional government and the legislature.

This notwithstanding, the legislature has investigative powers as spelt out by section 88 of the Nigerian Constitution⁷⁴, this power of investigation must be used effectively with the utmost efficacy and sense of responsibility.

⁷² A J Akintola, Law Practice and Procedure of Legislature, Learned Publishments.

⁷³ Ghai K K, Constitution Legislature: Meaning, Functions and Types of Legislature. www.scribd.com/document/328943608/Legislature

⁷⁴ CFRN, 1999.

3.2 Law Making Power of the Legislature.

The law making power of the legislature in Nigeria and some other countries whose system are patterned along that of the United States is derived from the constitution. Section 4 of the Nigerian

Constitution⁷⁵ provides that...

“(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:-

(a) any matter in the Concurrent Legislative List set out in the first column of Part

⁷⁵ CFRN, 1999.

II of the Second Schedule to this Constitution to the extent prescribed in the second

column opposite thereto; and

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void.

(6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.

(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:-

(a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(8) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

(9) Notwithstanding the foregoing provisions of this section, the National Assembly or a House of Assembly shall not, in relation to any criminal offence whatsoever, have power to make any law which shall have retrospective effect.

The section basically spells out the legislative powers of the legislature both at national and subnational level while relating their powers to either the concurrent legislative, exclusive legislative list or residual list.

The implication of the law making powers of the legislature as conferred by the Constitution is that every law enacted must be done in strict compliance with the provisions of the Constitution. Any legislation enacted by the legislature whether state or federal even if within the prescribed legislative competence would be declared ultra vires, null and void where same contravenes the provisions of the constitution. The Supreme Court declared an act of the National Assembly ultra vires and unconstitutional in *Attorney General of Bendel State v. Attorney General of the Federation & 22ors*⁷⁶. This means any act done by the National Assembly must be done in line with the spirit and provisions of the Constitution of the country.

The three major legislative power sharing formula under the Nigerian Constitution are –
Exclusive

⁷⁶ (1982) 3 N.C.LR 1

Legislative Powers; Concurrent Legislative Powers; and Residual Legislative Powers. The National Assembly has powers to make laws under the Exclusive Legislative List , the Constitution also vest power in National Assembly to make laws under the Current Legislative List and also under the Residual List by virtue of section 4(4) of the 1999 Constitution⁷⁷. This gives the National Assembly a great latitude to make laws for the country.

3.3 Legislative Oversight

Legislative Oversight is the review and evaluation of selected activities, services, and operations and the general performance of the executive branch of government by the legislature. The focus of any legislature should be to promote good governance, transparency and accountability. This leads us once again to the core mandate of a legislature which is representation, law making and oversight. Legislative oversight particularly seeks to ensure that the executive and its agencies, or those to whom authority is delegated, remain responsive and accountable⁸.

Section 88 and 89 of the Constitution gives the National Assembly power to conduct oversight functions on the activities of the Ministries, Departments and Agencies of the Executive arm of government. Also the Standing Orders of the Senate and House of Representative also gives the two Houses the power of legislative oversight⁹. This power is exercised through public and investigative hearings on the implementation of government policies and Act enacted by it.

This power of the National Assembly allows the legislature to appropriate funds, approve deployment of armies, approve declaration of war, consent to treaties, approve presidential

⁷⁷ CFRN, 1999. ⁸ “Stapenhurst, Rick; Pelizzo, Riccardo; Olson, David M.; von Trapp, Lisa. 2008. Legislative Oversight and Budgeting: A World Perspective. WBI Development Studies; Washington, DC: World Bank. © World Bank.
<https://openknowledge.worldbank.org/handle/10986/6547> License: CC BY 3.0 IGO.” ⁹ Senate Standing Order, Printed by National Assembly Press, Abuja

nominees by the Senate, and impeach the President and Vice President. These powers are part of the broad powers of the legislature to make laws for the peace, order and good government of the federation or any part thereof with respect to matters in the Exclusive Legislative List.

The power of the National Assembly to investigate can be seen in section 88 of the Constitution as spelt out in chapter two of this work

While the power to procure evidence can be found in section 89 of the Constitution-

“(1) For the purposes of any investigation under section 88 of this Constitutional and subject to the provisions thereof, the Senate or the House of Representatives or a committee appointed in accordance with section 62 of this Constitution shall have power to -

- (a) procure all such evidence, written or oral, direct or circumstantial, as it may think necessary or desirable, and examine all persons as witnesses whose evidence may be material or relevant to the subject matter;
- (b) require such evidence to be given on oath;
- (c) summon any person in Nigeria to give evidence at any place or produce any document or other thing in his possession or under his control, and examine him as a witness and require him to produce any document or other thing in his possession or under his control, subject to all just exceptions; and
- (d) issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects

to do so and does not excuse such failure, refusal or neglect to the satisfaction of the House or the committee in question, and order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his failure, refusal or neglect to obey the summons, and also to impose such fine as may be prescribed for any such failure, refused or neglect; and any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law.

(2) A summons or warrant issued under this section may be served or executed by any member of the Nigeria Police Force or by any person authorised in that behalf by the President of the Senate or the Speaker of the House of Representatives, as the case may require.

Power to receive the Audited Accounts of government is another power of the legislature which is provided for in section 85(2)-

“... (2) The public accounts of the Federation and of all offices and courts of the Federation shall be audited and reported on to the Auditor-General who shall submit his reports to the National Assembly; and for that purpose, the Auditor-General or any person authorised by him in that behalf shall have access to all the books, records, returns and other documents relating to those accounts...⁷⁸”

Power to Appropriate Funds can be found in section 80-83 of the Constitution-

⁷⁸ CFRN, 1999

“80. (1) All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.

(2) No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those moneys has been authorised by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of section 81 of this Constitution.

(3) No moneys shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been authorised by an Act of the National Assembly.

(4) No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by the National Assembly.

81. (1) The President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.

(2) The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund of the Federation by this Constitution) shall be included in a bill, to be known as an

Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

(3) Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of this Constitution.

(4) If in respect of any financial year it is found that -

(a) the amount appropriated by the Appropriation Act for any purpose is insufficient; or

(b) a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act, a supplementary estimate showing the sums required shall be laid before each House of the National Assembly and the heads of any such expenditure shall be included in a Supplementary Appropriation Bill.

82. If the Appropriation Bill in respect of any financial year has not been passed into law by the beginning of the financial year, the President may

authorise the withdrawal of moneys in the Consolidated Revenue Fund of the

Federation for the purpose of meeting expenditure necessary to carry on the services of the Government of the Federation for a period not exceeding months or until the coming into operation of the Appropriate Act, whichever is the earlier:

Provided that the withdrawal in respect of any such period shall not exceed the amount authorised to be withdrawn from the Consolidated Revenue Fund of the Federation under the provisions of the Appropriation Act passed by the National Assembly for the corresponding period in the immediately preceding financial year, being an amount proportionate to the total amount so authorised for the immediately preceding financial year.

83. (1) The National Assembly may by law make provisions for the establishment of a Contingencies Fund for the Federation and for authorising the President, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Fund to meet the need.

(2) Where any advance is made in accordance with the provisions of this section, a Supplementary Estimate shall be presented and a Supplementary

Appropriation Bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced⁷⁹.

But section 80 (4) provides that “No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by the National Assembly⁸⁰.”

The power of Removal and Confirmation is provided for in Section 143 of Constitution. This is the power to remove the President or Vice – President from office for gross misconduct, which is a great violation of the provisions of the Constitution. The Section provides as follows-

“(1) The President or Vice-President may be removed from office in accordance with the provisions of this section.

(2) Whenever a notice of any allegation in writing signed by not less than one-third of the members of the National Assembly:- (a) is presented to the President of the Senate;

(b) stating that the holder of the office of President or Vice-President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the President of the Senate shall within seven days of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause any statement made in reply to the

⁷⁹ CFRN, 1999

⁸⁰ CFRN,1999

allegation by the holder of the office to be served on each member of the National Assembly.

(3) Within fourteen days of the presentation of the notice to the President of the Senate (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice) each House of the National Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.

(4) A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed, unless it is supported by the votes of not less than two-thirds majority of all the members of each House of the National Assembly.

(5) Within seven days of the passing of a motion under the foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation as provide in this section.

(6) The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in

person and be represented before the Panel by legal practitioners of his own choice.

(7) A Panel appointed under this section shall -

(a) have such powers and exercise its functions in accordance with such procedure as may be prescribed by the

National Assembly; and

(b) within three months of its appointment report its findings to each House of the National Assembly.

(8) Where the Panel reports to each House of the National Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.

(9) Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report at the House the National Assembly shall consider the report, and if by a resolution of each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.

(10) No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court.

(11) In this section -"gross misconduct" means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct⁸¹.

The power to make all laws is provided for in Section 4(2) of the 1999 Constitution As Amended-

“The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution⁸².”

All these provisions of the Constitution empower the legislature to conduct oversight functions over the Executive arm of government and this is to ensure checks and balances in governance.

The Standing Orders of the Senate and the House of Representatives provide for oversight of the Executive through the activities of the Committees. For instance; the Senate Rules grants Committees on Appropriations and Finance the power to consider Appropriation Bills together with other Committees and sub-committees with respect to ministries, department and agencies under their supervision. Order 92 provides for the procedure on money Bills and Order 93 also

⁸¹ CFRN, 1999.

⁸² CFRN, 1999.

provides for annual reports and other sessional papers, which must be submitted within three months from the closing date for the submission of the report except where reasons for the delay are given to the Senate⁸³. Order 97 Rule 5 grants the Committee on Public Accounts power to examine the accounts showing the appropriation of the sums granted by the Senate to meet the public expenditure; together with the Auditor's report. The Committee shall have the power to send for any person, papers and records, to report from time to time to the Senate and to sit notwithstanding the adjournment of the Senate.

Each Committee of the Senate is allowed to consider from time to time such investigations and studies as it may consider necessary or appropriate in the exercise of its responsibilities. Each Committee of the Senate is also expected to submit a report of its activities to the whole House⁸⁴. These rules are equally applicable in the House of Representative Rule Book⁸⁵. The tools contained in the Rule Book of each legislative House in Nigeria are essentially used by the legislature to obtain the information it requires concerning any matter over which it requires it conducting oversight.

Some of these tools are Committee Public Hearings, Hearing in Plenary Session, Creation of Commission of Inquiry and Special Investigative Committees for example the Ad-hoc Committee formed by the House of Representative to look into the Central Bank of Nigeria policy on creation of the 200, 500 and 1000 naira notes and it ceasing to be a legal tender by the 31st of January, 2023. These Committees are usually created out of the need to investigate a

⁸³ Senate Standing Orders 2015 As Amended, printed by National Assembly Press, Abuja

⁸⁴ Committee Manual. A Publication of the National Institute for Legislative Studies and National Secretariat of Nigerian Legislatures, Second Edition: January 2015

⁸⁵ Standing Orders OF The House of Representatives, Tenth Edition, Printed by the National Assembly Press, Abuja.

suspected misnomer or abuse⁸⁶. Investigations serve quite a number of purposes, among which are- to ensure honesty and efficiency in the administration of laws; to secure information that assists Congress in making informed policy judgments; and to aid the Congress in informing the public about the administration of laws⁸⁷.

Questioning and Interactive Sessions are also tools of oversight. Oral and written questions are the mainstay of oversight. For example in Britain, all Ministers must face the House of Commons from time to time and the Prime Minister faces them once a week and where the Prime Minister's answers are not satisfactory enough; it can lead to a vote of no confidence.

Oversight visits are usually also carried out by Parliamentary Committees to monitor the performance of ministries, departments and agencies of the government. This visit must be clear and should only be carried out in aid of legislative function, the purpose must be to review general programmes, specific ones and level of projects in the executive agency. The power of the National Assembly to exercise legislative oversight of Executive activities with respect to implementation of Acts of the National Assembly, policies and programmes approved in the National Budget requires effective monitoring and evaluation. This is necessary to ensure that the Executive is accountable, transparent and sympathetic to the needs of the people.

Committee Reports

Committees make recommendations and submit their reports back to the whole House after an oversight activity is conducted. This report can include amendments from committees that

⁸⁶ Committee Manual. A Publication of the National Institute for Legislative Studies and National Secretariat of Nigerian Legislatures

⁸⁷ Committees in the Nigerian National Assembly. A Study of the Performance of Legislative Functions, 2003-2013 Second Edition, National Institute for Legislative Studies, National Assembly, Abuja.
<https://ir.nilds.gov.ng/handle/123456789/63>

considered Bills, while those Committees set up for special purposes will report back on their reviews. It is rather frustrating that there is no follow up mechanism on parliamentary reports though some countries like Canada give timelines for a comprehensive response on parliamentary reports. Some other Countries set up Committees on Assurances to check that the administration reports back on action taken on a demand from parliament to rectify some faulty procedure⁸⁸.

Oversight in the United States

In the United States of America, the U.S Congress derives its oversight authority from implied powers in the Constitution, from public laws, and House and Senate Rules. It is an integral part of the American system of checks and balances. Since these powers are implied; it simply means the Constitution does not give any formal, express authority to oversee or investigate the executive or program administration, oversight is implied in congress impressive array of enumerated powers⁸⁹.

The United States Congress is authorized to-

- a. Appropriate funds, raise and support armies;
- b. Navy and national guard;
- c. Declare war;
- d. Regulate interstate and foreign commerce;
- e. Advise and consent on treaties;
- f. Presidential nominations(Senate); and

⁸⁸ Ibid.

⁸⁹ Committees in the Nigerian National Assembly. A Study of the Performance of Legislative Functions, 2003-2013 Second Edition, National Institute for Legislative Studies, National Assembly, Abuja.
<https://ir.nilds.gov.ng/handle/123456789/63>

- g. Impeach (House) and try (Senate) the President, Vice President, and civil Officers for treason, bribery, or other high crimes and misdemeanours.

The U.S Congress took bold steps in 1946 to formalize oversight functions through the Legislative

Re-organization Act of 1946 and 1970 and the Congressional Budget Act of 1974. The Act required Committees to exercise continuous watchfulness of the agencies under their jurisdiction.

The Act divided oversight functions into three and they are –

1. Committees such as Agriculture, Education, Labour and Commerce were required to review federal programmes and agencies under their jurisdiction and to propose legislation to remedy deficiencies they uncover.
2. Fiscal Oversight. Appropriation Committees were required to scrutinize the spending of the agencies of government.
3. Investigate responsibilities. House Committee on Government Operations were required to probe the inefficiency, waste and corruption in the federal government.

The 1946 Act also stated the intention of the Congress to exercise its investigative authority through Standing Committees rather than through specially created investigative committees. The Act provided for continuous review of programmes instead of sporadic hearings whenever errors or malfeasance occurred. This continuous watchfulness allowed the Congress to be active in administrative decision making⁹⁰.

⁹⁰ Ibid.

3.4 Effect of Legislative Oversight

Legislative oversight especially through investigations have led parliaments into repeated confrontations with the executive and the Judicial arms of government over constitutional separation of powers. It also allowed members of some of these panels to be famous. For Instance,

Harry Truman achieved national prominence as Chairman of the World War II Senate Special Committee that investigated the National Defence Programme and Senator Robert F. Kennedy achieved a measure of popular recognition when he served as Chief Counsel of the Senate Select Committee on Improper Activities in the Labour or Management Field.

But the question has also arisen whether systematic and sustained scrutiny of the Executive is achieved and whether government accountability to parliament and the transparency of government operations has been increased by the work of these Committees?

A visible effect is what happens in Canada by virtue of the timeline given to the executive to respond to parliamentary reports. The government has undertaken to respond to a select committee's report especially to recommendations within two months of the date of publication. These responses are made in the form of a Command Paper or in a memorandum to the committee which may be published by the Committee under cover of a special report⁹¹.

3.5 Post Legislative Scrutiny

Post-Legislative Scrutiny as we discussed in chapter 2 consists of the body of mechanisms and practice used to monitor and evaluate the implementation of legislation, ensuring laws benefit constituents in the way originally intended by lawmakers. It is important for Parliaments to

⁹¹ Ibid.

institutionalize PLS so that the efforts they put into law making will not be one in futility. The whole essence of making laws is for the laws to be functional and for the objectives of the legislation to be fulfilled. There is no point in enacting a law that will be obsolete or abandoned in the long run because it is not needed as at the time it was enacted. Like they always say Nigeria has plethora of laws but the problem is with implementation of those laws.

Parliaments most often focus on getting a legislation made and do not bother to check how well it is being implemented and if it is effective at all. Implementation involves a lot as it is a complex business that depends on many elements such as funding, compliance, commitment and cooperation from institutions and citizens. Implementation can be affected by changes in politics in the economy or society⁹². This is why the legislature must oversight the implementation process of a legislation to ensure transparency and accountability of the Executive arm of government. They must not wait for moneys to be siphoned by civil servants or government officials before stepping in. it is important that they follow through with implementation the moment a Bill is signed into law and becomes an Act. The general practice is that once a bill is signed into law by the President the member/members who sponsored the Bill take the glory at that point in time and record it as an achievement to be used when campaigning without bothering with what the Executive does with the law.

In the United Kingdom, a pledge on PLS was taken and it is called the “The London Declaration on Post-Legislative Scrutiny” where Parliaments, Institutions, NGOs, and research organizations

⁹² Westminster Foundation For Democracy, Championing parliamentary oversight: THE LONDON DECLARATION ON POST-LEGISLATIVE SCRUTINY
<https://www.bing.com/search?q=Westminster+Foundation+For+Democracy%2C+Championing+parliamentary+oversight%3A+THE+LONDON+%0D%0ADECLARATION+ON+POST-LEGISLATIVE+SCRUTINY+%0D%0A&q=ds&form=QBRE#:~:text=oversight%3A%20THE%20LONDON%20E2%80%A6-,https%3A//www.wfd.org/sites/default/files/2021%2D12/...%C2%A0%C2%B7%20PDF%20file,-Web>

commit to promote, initiate, strengthen or support practices of post-legislative scrutiny in a national or sub-national parliament.

This declaration was an outcome of the Academic Seminar on Post-Legislative Scrutiny held in London on the 10th day of July, 2018 and jointly organized by the Institute of Advanced Legal Studies of the University of London and Westminster Foundation for Democracy (WFD). The declaration reads as follows-

“We, the signatories of this Declaration,

Recognize that the success of democracy rests on its capacity to improve the lives of citizens, in line with the commitments under the Sustainable Development Goals (SDGs);

Reaffirm that effective democracies adopt and implement legislation in accordance with the principles of legality, legal certainty and the rule of law;

Recognise that parliaments and legislators may play an important role in monitoring and evaluating if laws are benefiting citizens as originally intended;

Are conscious that implementation of legislation depends on a number of factors such as the clarity of the legislative texts; the compatibility with other laws and the constitution; the availability of human and financial resources to implement the law; timely issuing of secondary or delegated legislation; and full access to the legislation by enforcement authorities.

Recognize Post-Legislative Scrutiny, also called Ex-Post Evaluation of Legislation, as part of a full legislative cycle approach, defined as setting the agenda for legislation, followed by a legislative proposal, followed by the consideration and adoption of the law, followed by its

implementation by the government; followed by Post-Legislative Scrutiny, followed by legislative amendments or new legislation if necessary.

Acknowledge the need to identify any adverse effects of legislation more quickly and frequently, particularly when it impacts people already experiencing disadvantage and inequality;

Commit to promote Post-Legislative Scrutiny (Ex-Post Evaluation of Legislation) to ensure laws are implemented as intended, to increase legislators' focus on implementation and delivery of policy aims and to identify and disseminate good practice, so that lessons may be drawn from the successes and challenges revealed by this oversight work;

Recognize the multiple forms and diverse nature of practices of Post-Legislative Scrutiny in different parliaments, national contexts, political traditions and constitutional systems;

Call upon Parliaments and other actors involved in the adoption and implementation of laws, including the executive, judiciary, civil society, independent oversight institutions, to commit and contribute to the quality and effectiveness of legislation and its implementation...⁹³”.

Then went further to pledge to ten principles on PLS which we shall also list out below.

“Therefore, we pledge to advance the following ten principles on Post-Legislative Scrutiny (Ex-Post Evaluation of Legislation):

1. Post-Legislative Scrutiny is a broad concept, including two main dimensions:

⁹³ Westminster Foundation For Democracy, Championing parliamentary oversight: THE LONDON DECLARATION ON POST-LEGISLATIVE SCRUTINY. <https://www.wfd.org/sites/default/files/2021-12/...> · PDF file

(1) evaluating the introduction and enforcement of a piece of legislation, thus whether the legal provisions of the law have been brought into force;

(2) evaluating the impact of legislation, thus if its intended policy outcomes have been met. Parliaments are invited to look at both aspects of Ex-Post Evaluation of Legislation.

2. Parliaments can undertake Post-Legislative Scrutiny on any matter that they so choose and at any given time. Trigger points for a parliament to initiate Post-Legislative Scrutiny include, among others, requests by citizens or organizations that a piece of legislation be reviewed, media reports, petitions, members of the judiciary highlighting gaps, loopholes or contradictions in legislation, and regular parliamentary committee work dealing with an issue.

3. Parliaments are invited to promote an open and consultative process for identifying the pieces of legislation that are selected for review, considering the time and resources available for Post-Legislative Scrutiny. If applicable to the national context, legislation affecting civil liberties and legislation adopted under fast-track procedures are best included in the list of legislation selected for review. To be as effective as possible, Post-Legislative Scrutiny may intend to review secondary or delegated legislation at the same time as reviewing the primary or parent act.

4. Parliament's role in Post-Legislative Scrutiny can benefit from the data and information on legislative implementation by the government. The availability of information by the government and by independent agencies affects the efficiency of Post-Legislative Scrutiny by parliament to a significant extent. While Post-Legislative Scrutiny can be instrumental in

building effective relations between parliamentary committees and ministries, it also aims to make the executive more accountable before parliament for law implementation.

5. Post-Legislative Scrutiny provides an opportunity to assess the impact of legislation on the wellbeing of all citizens and to address any unforeseen disadvantages or inequalities that may have been created based on gender, education, geographic location, disability, sexuality, income, religion, ethnicity, language or other factors. A focus on inclusion supports greater monitoring and oversight of policy commitments to gender equality and human rights; and it furthers the SDG guiding principle of leaving no one behind.
6. Parliamentary committees play a key role in conducting Post-Legislative Scrutiny. While considering the appropriate structure to conduct Post-Legislative Scrutiny, Parliaments may assign the scrutiny to standing (permanent) sectorial committees, to a dedicated committee, to ad hoc committees or to a parliamentary unit. Where parliamentary committees play a key role, they often do the political follow-up of the draft technical ex-post scrutiny reports, usually prepared by parliamentary staff or experts.
7. To make Post-Legislative Scrutiny as efficient and sustainable as possible, parliaments are invited to conduct it in an inclusive process in which all party groups in parliament can participate.
8. Parliaments are invited to include outreach and public engagement as part of the Post Legislative Scrutiny process as this enables the access to additional sources of information and evidence. Committee public hearings or consultations which are part of the Post Legislative Scrutiny inquiry can enhance public trust in parliament and in other democratic institutions, and public participation in the decision-making within parliament. Best parliamentary practices make the

Post-Legislative Scrutiny reports available to the public, whenever possible. It is useful that independent or autonomous agencies, in particular when established by legislation approved by parliament, report to parliament on how that legislation has been implemented, identifying any issues with implementation and whether it solved the problem that it was intended to address.

9. In drafting legislation, parliaments can resort when appropriate to sunset or review clauses as specific means for planning post-legislative scrutiny reviews. Parliaments are invited to consider putting processes in place to ensure consideration of the findings of Post-Legislative Scrutiny. Recommendations of Post-Legislative Scrutiny reviews are then tracked and followed through and, where necessary, changes to legislation and policy are made in a timely manner. In this way, Ex-Post Evaluation of legislation becomes part of a full-cycle approach to legislation.

10. Parliaments are invited to consider institutionalizing their efforts in Post-Legislative Scrutiny through their potential inclusion in the parliamentary rules of procedures or other equivalent documents, in line with their respective parliamentary practices. This contributes to generating clarity, purpose and resources for Post-Legislative Scrutiny activities, and ensures its sustainability”⁹⁴.

The London Declaration on Post-Legislative Scrutiny absolutely sums up the importance and the need for Post-Legislative Scrutiny. The pledge was made to advance ten principles on PLS and we need not say more at this point.

PLS is the practice of monitoring the implementation and evaluating the impact of laws. This is necessary to ensure that laws made by the law makers meet the aim and objectives of the

⁹⁴ Ibid.

legislation. It is an inquiry by a parliamentary select committee into how a new law has worked in practice since it came into force.

The U.K Law Commission in its 2006 report listed four main reasons why it is important to have systematic PLS as to see whether legislation is working out in practice, as intended; to contribute to better regulation; to improve the focus on implementation and delivery of policy aims; to identify and disseminate good practice so that lessons may be drawn from the successes and failures revealed by this scrutiny work.

It is also important to state the need to act preventively regarding potential adverse effects of new legislation on fundamental rights, including, gender equality, the environment and climate, or on economic and social welfare.

PLS therefore enables a parliament to self-monitor and evaluate, as well as reflect on the merits of its own democratic output and internal technical ability.

This role of PLS can be divided into categories –

- a. the broad legislative view which evaluates whether and to what extent one or more pieces of legislation has achieved its intended purpose and what is its impact; and
- b. the narrower evaluation of how a piece of legislation is working in practice⁹⁵ .

The latter is more focused and a more purely legal and technical review. PLS plays two key functions which are monitoring function, as the application of legislation and especially the adoption of the necessary secondary legislation is assessed by parliament at identified moments

⁹⁵ Franklin De Vrieze, Parliamentary and Legislative indicators for post-legislative scrutiny.
<https://www.wfd.org/sites/default/files/2022-02/>

and as an evaluation function, as parliaments seek to ensure the normative aims of policies are reflected in the results and effects of legislation

Legislative evaluation is an effort to support this by institutionalizing and systematizing a moment of analysis and assessment focusing specifically on improving the quality of legislation passed.

Such an act should improve a parliament's understanding of the causal relations between a law and its effects as the accuracy of assumptions underlying legislation are tested after its enactment.

PLS as a form of legislative evaluation is therefore a learning process that both contributes to a parliament's knowledge of the impacts of legislation but also its knowhow in ensuring legislation meets the needs of relevant stakeholders.

Post-legislative scrutiny is the process of examining the effectiveness and impact of legislation once it has been enacted into law. It involves evaluating whether the law has achieved its intended outcomes, identifying any unintended consequences, and assessing whether it is still fit for purpose.

The role of post-legislative scrutiny is to ensure that laws are effective, efficient, and consistent with the principles of good governance. It helps to identify any gaps, weaknesses or inconsistencies in the law, and to suggest ways in which it can be improved or updated to better achieve its objectives. By conducting post-legislative scrutiny, policymakers can ensure that laws are evidence-based, responsive to changing circumstances, and reflective of public needs and preferences.

Post-legislative scrutiny can also help to enhance transparency and accountability in the legislative process. By providing opportunities for public input and review, it can help to build trust and confidence in the lawmaking process and ensure that legislation is responsive to the needs and concerns of the communities it affects.

Overall, the role of post-legislative scrutiny is to ensure that laws are effective, efficient, and responsive to the needs and interests of society. It is an essential component of the legislative process that helps to ensure that laws are fit for purpose and contribute to the greater good.

PLS is so important in the legislative circle that it plays key role in different fields such as in governance, implementation of laws and even on the people.

3.5.1 Post-legislative scrutiny in Governance-

Post-legislative scrutiny plays an important role in governance by promoting transparency, accountability, and responsiveness in the legislative process. It helps to ensure that laws are effective, efficient, and consistent with the principles of good governance.

The role of post-legislative scrutiny in governance includes -

- a) Evaluating the effectiveness of legislation: Post-legislative scrutiny provides an opportunity to assess whether the legislation has achieved its intended objectives, and to identify any unintended consequences or gaps in the law.
- b) Identifying areas for improvement: By evaluating the effectiveness of legislation and post-legislative scrutiny can help to identify areas where the law could be improved or updated to better achieve its objectives.
- c) Enhancing transparency and accountability: By providing opportunities for public input and review, post-legislative scrutiny can help to build trust and confidence in the

lawmaking process and ensure that legislation is responsive to the needs and concerns of the communities it affects.

- d) Ensuring compliance with legal and constitutional norms: Post-legislative scrutiny can help to ensure that legislation is consistent with legal and constitutional norms and that it does not infringe on the rights and freedoms of individuals.
- e) Supporting evidence-based policymaking: Post-legislative scrutiny provides an opportunity to evaluate the effectiveness of policies and to gather data and evidence that can inform future policymaking.
- f) to promote effective, efficient, and accountable policymaking that is responsive to the needs and interests of society. It is an essential component of the legislative process that helps to ensure that laws are fit for purpose and contribute to the greater good.
- g) Post-legislative scrutiny plays a critical role in the implementation of legislation by evaluating whether laws are achieving their intended outcomes, identifying any gaps in implementation, and proposing changes or improvements that can help enhance the effectiveness of the legislation.

3.5.2 Post-legislative scrutiny in implementation of legislation

The role of post-legislative scrutiny in the implementation of legislation also includes-

- a) Evaluating the effectiveness of implementation: Post-legislative scrutiny provides an opportunity to assess whether the law is being implemented effectively and achieving its intended objectives.

- b) Identifying implementation gaps: By evaluating the implementation of legislation, post-legislative scrutiny can identify any gaps in implementation or barriers to effective implementation.
- c) Providing recommendations for improvement: Based on the evaluation of implementation, post-legislative scrutiny can provide recommendations for improvement, including changes to the law, changes to implementation processes, or changes to the allocation of resources.
- d) Enhancing accountability: By assessing implementation, post-legislative scrutiny can help to ensure that those responsible for implementing the law are held accountable for their actions.
- e) Facilitating communication and collaboration: Post-legislative scrutiny can help to facilitate communication and collaboration between different actors involved in implementation, including policymakers, regulators, and stakeholders.
- f) Generally, the role of post-legislative scrutiny in the implementation of legislation is to ensure that laws are implemented effectively and efficiently, that they achieve their intended outcomes, and that they are responsive to the needs and interests of society. It is an essential component of the legislative process that helps to ensure that laws are fit for purpose and contribute to the greater good.

Post legislative scrutiny has an important role in ensuring that laws serve the interests of the people. By evaluating the impact of laws on society, post legislative scrutiny can help identify any unintended consequences, gaps or areas of improvement, and ensure that laws are meeting their intended purpose.

3.5.3 Role of Post-legislative scrutiny on the Society-

Here are some ways in which post legislative scrutiny can impact the people-

Better laws: Post legislative scrutiny can lead to the identification of areas where laws are not meeting their intended objectives or are having unintended negative consequences on the people.

By addressing these gaps or weaknesses, better laws can be created that better serve the interests of the people.

Improved public services: Scrutiny can help identify areas where public services are not being delivered effectively or efficiently. By making recommendations for improvement, the delivery of public services can be enhanced, benefiting the people who use them.

Increased accountability: Scrutiny can help ensure that policymakers and legislators are held accountable for the impact of their legislation on the people. This can increase public trust in the legislative process and hold officials responsible for their decisions.

Increased participation: Post legislative scrutiny can provide an opportunity for the public to provide feedback on how laws are affecting them. By encouraging participation, policymakers can better understand the impact of their decisions on the people, and make more informed decisions in the future.

Post legislative scrutiny plays a critical role in ensuring that laws and policies serve the interests of the people. By identifying areas for improvement, ensuring accountability, and increasing participation, scrutiny can lead to better outcomes for everyone.

3.5.4 Post-legislative scrutiny and the Judiciary-

Post-legislative scrutiny refers to the process of reviewing and evaluating the effectiveness and impact of legislation after it has been enacted. While the primary responsibility for interpreting and enforcing laws lies with the judiciary, post-legislative scrutiny can play a complementary role in informing judicial decision-making.

By examining how legislation has been implemented and its impact on society, post-legislative scrutiny can provide valuable insights into the intent and purpose of the law. This can help judges better understand the context in which a law was enacted and how it is meant to be applied.

Post-legislative scrutiny can also help identify areas where a law may be unclear, ambiguous, or in need of amendment. This can be particularly useful for judges when interpreting complex or controversial legislation, where clarity and precision are critical to ensuring that justice is served.

It can provide a valuable source of information and guidance for the judiciary, helping to ensure that the law is applied in a fair, consistent, and effective manner.

CHAPTER FOUR

ANALYSIS OF THE ROLE OF POST LEGISLATIVE SCRUTINY IN LAW MAKING IN NIGERIA AND LESSONS FROM THE UNITED STATES PRACTICE

Chapter four focused on the role of post legislative scrutiny in law making and lessons from the United States of America, with particular attention on the Coronavirus Aid, Relief and Economic Security (CARES) Act and the impact of the reporting requirements imbedded in it.

4.0 An Analysis of The CARES Act

The Coronavirus Aid, Relief and Economic Security (CARES) Act, H.R. 748, came about to address issues related to the COVID-19 pandemic. The Act was passed by the United States Congress on the 25th day of March, 2020 and signed into law by President Donald Trump on March 27, 2020⁹⁶. It committed over \$2 trillion to efforts to blunt the economic impact of the COVID-19 pandemic on the United States. It is reportedly the most expensive piece of stimulus legislation in

⁹⁶ U.S Department of Treasury, <https://home.treasury.gov>

U.S. history passed after the \$800billion economic stimulus package passed in 2009 (American Recovery and Reinvestment Act) ARRA⁹⁷.

The CARES Act spells out oversight provisions focused at preventing and detecting fraud, waste, abuse and mismanagement⁹⁸. There are five levels of oversight, and the CARES Act alone has three new mechanisms imbedded into it; this is necessary because agencies were given additional funding in the Act and so became subject to various reporting requirements. Its reporting requirements and distinct oversight and accountability provisions promote transparency and support oversight of funds. These provisions are in line with Article 1, Section 9, Clause 7 of the

U.S Constitution which provides that-

No money shall be drawn from the Treasury, but in consequence of Appropriations made by law; and a regular statement of Account of the Receipts and Expenditures of all public money shall be published from time to time.⁹⁹

Clearly, this shows that reporting is an important aspect of oversight and it ensures transparency and accountability in any government.

The Act splits the legislation into two Divisions -“Division A” and “Division B¹⁰⁰”

Division A is divided into the following and primarily tasks the following agencies with provisions for keeping workers paid and employed, enhancing the health care system, and stabilizing the economy-

- i. The Small Business Administration (SBA)
- ii. Department of the Treasury (Treasury)

⁹⁷ Wagoner J, The CARES Act- Agency Reporting and Oversight Implications.

⁹⁸ The CARES Act, 2020, Pub. L. No. 116-136 (2020)

⁹⁹ Ibid.

¹⁰⁰ Jason Wagoner, The CARES Act- Agency Reporting and Oversight Implications.

- iii. Department of Health and Human Services
(HHS)
- iv. Department of Labor (DOL)
- v. Department of Education (Education)

SBA allows loan to provide relief programs for American workers and business. It also directs SBA to give loan forgiveness, subsidies for loan payments and grants for entrepreneurial development.

Treasury must receive detailed expenditure plans from agencies before the expiration of 180 days after the law is enacted. These loans are given through Treasury's Exchange stabilization fund, which supports various loans, loan guarantees and other investments for those affected by COVID19. All loans and loan guarantees are made in accordance with the provisions of the Federal Credit Reform Act of 1990.

HHS supports America's health care system through the CARES Act by examining and reporting on the security of the nation's medical product supply chain Reporting and summarizing the activities and outcomes associated with HHS' education and training program grants, contracts, and cooperative agreements Extending existing HHS programs, such as Medicare and Medicaid.

The DOL focuses on unemployment and administers a series of unemployment insurance provisions, including pandemic unemployment assistance, emergency unemployment relief for governmental and nonprofit entities, and pandemic emergency unemployment compensation.

DOL has a duty to certify to the Treasury certain sums payable to each state.

The Department of Education has a multitude of education provisions as a result of the CARES Act, including campus-based waivers, supplemental educational opportunity grants for emergency aid, and adjustments of subsidized loan usage limits.

Division B

This Division provides for emergency appropriations for coronavirus health response and agency operations because several agencies received various levels of funding to provide support in combating coronavirus. For example, the Department of Agriculture received funding to provide support to farmers to tackle the virus, including specialty agricultural producers, livestock producers, and producers that supply local food systems, such as farmers markets, restaurants, and schools. .

The Act equally provided emergency funding for other agencies such as the Federal Emergency Management Agency which received \$45 billion for its disaster relief fund. Other agencies that also received emergency appropriations include-

- a. Departments of Justice;
- b. Defense;
- c. Homeland Security;
- d. Interior;
- e. Veterans Affairs;
- f. Energy;
- g. Labor;
- h. National Aeronautical and Space Administration;
- i. National Science Foundation;

- j. Nuclear Regulatory Commission;
- k. Federal Communication Commission;
- l. Social Security Administration;
- m. Environment Protection Agency; and
- n. Office of Personnel Management.

4.1 Reporting Requirements under the CARES Act.

There are five levels of oversight under the CARES Act though two were already in existence and three new ones were included¹⁰¹. The existing oversight mechanisms include-

1. The Office of the Inspectors General must conduct audits and investigations of projects and activities carried out by agencies with the emergency funds.
2. The Government Accountability Office must submit a report in December 2020, and afterwards submit a report annually with regard to the loans, loan guarantees, and other investments made under the law.

The three newly created oversight functions were included to provide specific and targeted oversight of the implementation and administration of the emergency funding. The three include-

1. Office of the Special Inspector General for Pandemic Recovery.
2. The Pandemic Response Accountability Committee (PRAC)⁷.
3. Congressional Oversight Commission (COC).

¹⁰¹ Jason Wagoner, CARES Act- Agency Reporting and Oversight Implications. ⁷ Division B, Title V, CARES ACT, 2020 ⁸ Sec. 4018(c) (1), The CARES Act, 2020. Pub. L. No. 116-136 (2020)

1. The Office of the Special Inspector General for Pandemic Recovery was created within the Treasury to conduct and coordinate audits and investigations of the making, purchase, management, and sale of loans and loan guarantees. To scrutinize the actions of the Treasury secretary in distributing \$500 billion in aid under the CARES Act¹⁰². Its budget is \$25 million¹⁰³.
2. The Pandemic Response Accountability Committee was created to promote transparency and support oversight of the funds provided by the CARES Act to prevent and detect fraud, waste, abuse, and mismanagement¹⁰⁴. The core mandate of PRAC is to oversee all spending, lending, and other outflows appropriated under the law, and under any past or future COVID-related measures¹⁰⁵. The Committee will also develop a strategic plan to coordinate efforts with the Inspectors General and this coordination will include audits and reviews of the contracts made through the CARES Act to target such things as wasteful spending and poor contract or grant management, and to ensure the reporting of contracts and grants meets applicable standards. The budget allocated for this is 80m usd¹⁰⁶.
3. Congressional Oversight Commission must report to Congress the impact of the loans and loan guarantees on the financial well-being of the people, economy, financial markets, and financial institutions. The Budget is “such sums as may be necessary for any

¹⁰² Sec. 4018(g)(1), CARES Act Pub. L. No. 116-136 (2020)

¹⁰³ Justin Rood & Liz Hempowicz, Rebecca Jones & Tim Stretton, Oversight Provisions in the CARES Act: What they are, what they do, and how to make sure they work for Americans.

¹⁰⁴ Sec. 15010 (b) (1) CARES Act, 2020. Pub. L. No. 116-136 (2020)

¹⁰⁵ Sec. 15010 (b), CARES Act, 2020. Pub. L. No. 116-136 (2020)

¹⁰⁶ Rood J & Hempowicz L, Jones R & Stretton T, Oversight Provisions in the CARES Act: What they are, what they do, and how to make sure they work for Americans.

fiscal year¹⁰⁷” and it is responsible to oversee Treasury’s and the Federal Reserve’s implementation of the law, and to assess the effectiveness of the programs set up through pandemic-related legislation to improve our financial wellbeing and transparency measures¹⁰⁸.

The Congressional Oversight Committee was created under the leadership of Nancy Pelosi and it is a bipartisan Committee made up of Republicans and Democrats. The COC oversees how Department of Treasury and the Board of Governors of the Federal Reserve System are utilizing specific task payer funds to provide economic stability as a result of the COVID-19 pandemic. They are to ensure that all the benefits and relief package in that law are actually being implemented. The COC was established by Section 4020 of Title IV, Subtitle A of the CARES Act¹⁰⁹.

The CARES Act creates multiple new oversight mechanisms for funds provided in connection with its programs. It also establishes multiple new oversight bodies with respect to spending in the executive and legislative branches. The Act looks deeply into activities of the government targeting fraud, waste and abuse across the CARES Act programs and various sector of the economy.

¹⁰⁷ Sec. 4020 (g) (1), CARES Act, 2020. Pub. L. No. 116-136 (2020)

¹⁰⁸ Sec. 4020 (a) (1) (A), CARES Act, 2020. Pub. L. No. 116-136 (2020)

¹⁰⁹ Congressional Oversight Commission, U.S Government Publishing Office.

<https://www.bing.com/search?q=Congressional+Oversight+Commission%2C+U.S+Government+Publishing+Office&qsn&form=QBRE&sp=->

[1&lq=1&pq=congressional+oversight+commission%2C+u.s+government+publishing+office&sc=1-](https://www.bing.com/search?q=congressional+oversight+commission%2C+u.s+government+publishing+office&sc=1-)

[68&sk=&cvid=05C01304A9EB416FB333551462856157&ghsh=0&ghacc=0&ghpl=#:~:text=Congressional%20Oversight%20Commission-,https%3A//coc.senate.gov/reports,-Web](https://www.bing.com/search?q=congressional+oversight+commission%2C+u.s+government+publishing+office&sc=1-68&sk=&cvid=05C01304A9EB416FB333551462856157&ghsh=0&ghacc=0&ghpl=#:~:text=Congressional%20Oversight%20Commission-,https%3A//coc.senate.gov/reports,-Web)

4.2 Leahy Law

The Leahy Law is not in one particular law but the provisions of two important legislations in America that requires that the U.S secretary of Government and Secretary of Defence report from time to time to Congress about the implementation of funds from the U.S government given to countries without human right issues. But once, it is discovered that any country has violated human right laws then such support will be withdrawn or suspended. This legislation was approved by the U.S Congress in 1997 and it has some oversight mechanism imbedded in it so that the Country does not provide assistance to foreign security force units that violate human rights with impunity. This law was named after Senator Patrick Leahy (D.Vermont), who was the principal sponsor of the Bill and the legislation prohibits Department of State and the Department of Defense from providing military assistance which can be training or even equipment to foreign security force units or individual suspected of committing gross human rights violations. Such violations include extrajudicial killing, rape, torture and forced disappearances¹¹⁰.

The legislation stipulates that the State Department must vet any foreign military unit that needs assistance to ensure it has a clean human right record first before it can be assisted. If any history of abuse is received from any independent legit Non-Governmental Organization the assistance will be stopped because where a foreign security unit were to receive U.S support then commits atrocities like mass rape or are involved in the disappearance of a political activist, the U.S government will be seen as a complicit in the crime. This will undermine their moral authority

¹¹⁰ Lumpe L, What the Leahy Law Means for Human Rights,
<https://www.bing.com/search?q=Lumpe+L%2C+What+the+Leahy+Law+Means+for+Human+Rights&cvid=33d2963b71e64e0592e645251e7f0117&aqs=edge..69i57.4962j0j4&FORM=ANAB01&PC=HCTS#:~:text=Open%20Society%20Foun%E2%80%A6-,www.opensocietyfoundations.org/voices/what%2Dleahy%2Dlaw%2Dmeans%2Dhuman%2Drights,-Was%20this%20helpful>

and values and also put in danger local based U.S troops and citizens¹¹¹. One of the major values of American foreign policy is to uphold the tenets of human rights worldwide and in their domestic environment. They believe that any country that is reckless with their human rights matters ultimately becomes a “rogue country” as far as the interest of America is concerned.

For many years America did not distinguish between such countries involved in human rights violations and at some point the U.S was accused of supporting rogue regimes like Congo and Mobutu Sese seko was seen as an American ally for a long time while he was messing up his people by engaging in serious violations of human rights which led Senator Patrick Leahy to sponsor clauses in two sets of legislation and the clauses say any such country involved in human rights violation will cease to enjoy funding support from the U.S government. These clauses are called Leahy law and they constitute a good example of post legislative scrutiny because of the requirement that the Secretary of State and Secretary of Defence will report to Congress from time to time to state the level of compliance of human rights by such country enjoying U.S financial support; so when Congress is approving appropriations such countries will be suspended.

The U.S State Department has implemented the law all over the world and has suspended U.S support from taking effect in Colombia, Indonesia, Pakistan and some other places once it was discovered that there were gross human rights violations in such places. The State Department for diplomatic and some other reasons do not make public its decisions to suspend aid to a particular foreign unit.

¹¹¹ Ibid.

4.3 The Nigerian System and Its Challenges

The Powers of Legislative oversight are enshrined in the Constitution of the Federal Republic of Nigeria, Statutes and also in the Rule Book of the two Chambers of the National Assembly. Section 88 and 89 of the Constitution provides the National Assembly with powers of investigation or inquiry and Section 128 and 129 provides same for the Houses of Assembly as discussed in the previous chapters. These provisions empowers the Legislature as a watch dog to play a salient role in the supervision and control of the general administration of government¹¹². The implication of the Sections mentioned above is that the National Assembly has constitutional authority to investigate or make inquiry into any matter or summon anyone.

Also in addition to the powers of Legislative oversight is the Standing Orders of the Legislature¹⁹. Section 60 and 101 of the Constitution gives the Legislature the power to regulate its own procedure¹¹³. This procedures are encapsulated in the Standing Orders and gives direction on how the Legislature should carry out its functions. They serve as a vehicle of legislative stability that ensures the Legislature discharges its mandate of a fulcrum of stable democracy that guarantees good governance, rule of law, fundamental freedom and human rights.

It was Griffith and Ryle that said-

Procedures are not sacrosanct, they are servants, not masters. Procedures, once adopted, must be followed but if they do not work well, or produce results acceptable to those whose operations are conditioned by them, they can and should be changed. The House remains the master of its own procedures. It can do what it likes, not

¹¹² EO Anyaegbunam, Essentials of The Nigerian 1999 Constitution as Amended, [https://library.statehouse.gov.ng/cgi-bin/koha/...](https://library.statehouse.gov.ng/cgi-bin/koha/)

¹⁹ CFRN, 1999.

¹¹³ CFRN, 1999.

individual members not majority or minority groups and not the speaker or its Officers and unless and until the House, collectively and formally changes its procedures, they are binding on all its members and officers.¹¹⁴

Legislative oversight though very clear shall be declared *ultra vires* where it contravenes the provision of the Constitution. This was clearly stated in the case of *Attorney General of Bendel State v. Attorney General of the Federation & 22 Others* where the Supreme Court declared an Act of the National Assembly *ultra vires* and unconstitutional¹¹⁵. It is thus very important that in carrying on its lawmaking functions, the legislature must adhere to the provisions as well as the spirit of the Constitution¹¹⁶.

In the case of *Tony Momoh v. Senate of The National Assembly* the court held that the legislature is not given powers to usurp the general investigating functions of the executive nor the adjudicative functions of the judiciary²⁴. Therefore, any invitations by the legislature to any person outside the purpose defined in the relevant section is invalid. Also, the prosecution of persons found guilty of corrupt practices or gross inadequacies or misconduct in the discharge of the public office is left to the executive. Furthermore, any investigation which is sought to only expose or ridicule persons, especially their private affairs, without any legislative intent, will not be entertained.

It was Chief Justice, Earl Warren, American Jurist and Politician who captured the limits on the power of Legislative oversight when he stated thus:

the power of the congress to conduct investigation is inherent in the legislative process. The power is broad; it encompasses inquiries

¹¹⁴ JAG Griffith and Michael Ryle *Parliament Functions, practice and Procedure* (1989).

¹¹⁵ *Attorney General of Bendel State v. Attorney General of the Federation and 22 Ors.* (1982) 3 NCLR 1 see also (1983) ALL NLR 208.

¹¹⁶ AJ Akintola, *Law Practice and Procedure of Legislature* (Learned Publishments)

²⁴ *Tony Momoh v. Senate of the National Assembly* (1982) NCLR 105.

concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling congress to remedy them. It comprehends probes into department of the Federal Government to expose corruption, inefficiency and waste. But broad as this power of inquiry is, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the congress... nor is the congress a law enforcement or trial agency. There are functions of the executive and judicial departments of government. No enquiry is an end in itself; it must be related to, and in furtherance of the legislative task of congress. Investigation conducted solely for the personal aggrandizement of the investigators or to “punish” those investigated is indefensible...¹¹⁷

Post-legislative Scrutiny can enhance checks and balances, fiscal discipline, good governance, accountability and transparency in public offices. Accountability is promoted in government by ensuring efficiency and cost effectiveness. It helps the members of the public to be more aware of what the executive branch of government is doing, whether their interests are being served or not. There has been a couple of instances where the interests of the people has been tampered with and these instances are termed as the challenges to Legislative oversight. In order to forge ahead we must mention a couple of these challenges to include-

I. Lack of Transparency, accountability and effectiveness;

This occurs where the members of the executive in the MDAs refuse to be transparent, accountable or even effective in the process of executing their responsibilities.

II. Corruption which is a major challenge in the country;

On the issue of corruption, this can either be on the part of the executive or on the part of the legislature and a legislature that is an epitome of integrity can use resolution with and be backed up by members of the public¹¹⁸. If the legislature is short of the

¹¹⁷ Guide to Legislative Oversight in the National Assembly (Published by: Policy and Legal Advocacy Centre (PLAC) Abuja, Nigeria. With support from UKaid PLAC 2016)

¹¹⁸ Kron & Oshlon, 2009 and AbdulRafiu, 2008, <https://www.researchgate.net/publication/351661646>.

above, no matter what it discovered in the course of its oversight activities is likely to be seen as an empty claim for pecuniary gain. Some Lawmakers have been found seriously wanton in the past and their attitudes eroded their integrity, credibility and by extension, the oversight role they do. Many people are of the opinion that the members of the National Assembly often embark on oversight functions for mischievous and selfish interest. For instance, It has been argued that mischievous use of oversight power involves subtle threats of the executive and other public officials to obtaining unmerited private benefits¹¹⁹. Studies and observations have shown that selfish and mischievous uses of oversight are major limitations of the legislature in Nigeria¹²⁰. A typical example was after the fuel-subsidy removal strike; the House of Representatives convened an emergency session after which it set up the Ad-hoc Committee to verify the subsidy requirements for the year. The committee investigated twenty-eight oil marketers and indicted about eighteen. Mr. Femi Otedola, the Chairman, Zenon Petroleum and Gas indicted Hon. Farouk Lawan and his team of collecting \$620,000 cash from him to delist his company. Mr. Otedola claimed the money he gave was marked with the knowledge of the State Security Agency. Hon. Farouk Lawan, initially denied collecting the money but later confessed that he took the money with the knowledge of the Police and intended to later use it as evidence to prosecute Mr. Otedola. Farouk Lawan is currently sitting in Jail after he was found guilty by a Court of competent jurisdiction¹²¹.

¹¹⁹ Obiyan , 2011, <https://www.researchgate.net/publication/351661646>

¹²⁰ Challenges of Legislative Oversight on Good Governance in Nigeria
<https://www.iiste.org/Journals/index.php/DCS/article/download/43687/45020>

¹²¹ <https://www.premiumtimesng.com/news/headlines/469565-500000-bribery-why-judge-believed-femi-otedola-rejected-farouk-lawans-testimony.html>

III. Inadequate research facilities;

This is caused by inadequate materials for the Committees who are not properly funded and sometimes total lack of these materials to carry out necessary activities to conduct investigations.

IV. Flagrant disregard for National Assembly resolutions or the lukewarm attitude in which resolutions are treated by the Executive:

Many times members of the executive have outright refused to appear before the legislature and this hinders them from carrying out their constitutionally ordained responsibilities under section

88 of the Constitution¹²². A typical example was when the Comptroller General of Customs (Hameed Ali) was asked to appear before the Senate in Uniform and he refused. This became a running battle between the CG of Customs and the legislature which led to a distraction from the original issue that would have been beneficial to the nation as a whole.

V. Lack of interest in following up with implementation of the law by members of the National Assembly;

Members of the legislature are usually more concerned with the passage of the law which adds a feather to their cap than to the implementation of the law; they leave the implementation aspect to the executive to handle.

VI. Complacency in just passage of laws;

Complacency because they are comfortable with the law-making aspect of the core responsibilities of the legislature.

¹²² CFRN, 1999

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS, AND CONCLUSIONS.

This Chapter focused on the summary of findings, recommendations, and conclusion.

5.1. Summary of Findings

This research work has achieved the main aim and objectives of the study; by analyzing post-legislative scrutiny in Nigeria and obtaining lessons from the practice in the U.S.A by particularly focusing on the reporting system in the CARES Act, 2020. It also considered the Leahy laws, addressed questions that were raised in the research and proffered solutions and recommendations.

The major findings of this research work are that – Post-legislative scrutiny is necessary in any democracy for the purposes of functionality of laws. If laws are abandoned after being successfully signed into law, then there would be a lot of abandoned laws not properly implemented. It was also discovered that law making cycle that starts with initiation of bills, first reading, second reading and third reading does not actually end with presidential assent.

The Constitution Committee of the House of Lords in 2004 found an overwhelming support for PLS and this has since been recognized by different legislatures all over the world. The research established that there are crucial reporting systems imbedded in the CARES Act and Leahy Laws to prevent and detect fraud, waste, abuse and mismanagement of funds. There are three new levels for oversight of funds in one single legislation (the CARES ACT) and they are – Special inspector General for Pandemic Recovery (SIGPR); Pandemic Response Accountability Committee (PRAC); Congressional Oversight Committee.

In spite of the contributions of PLS to the implementation of laws, there is a need to address the gap created in the Nigerian system by the lack of PLS in the legislative arm of government. This has generated a lot of conversations and the implication of a lack of it.

The work further discovered that there are various challenges to the role of PLS as the power of parliament to carry out investigation in the law making process is a very narrow view because it restricts oversight to the law making process. The power of oversight granted to the legislature under Section 88 of the 1999 Constitution is also not limitless and Nigeria as a country does not practice any form of organized scrutiny. Corruption in the legislative process is another challenge that affects post legislative scrutiny and lack of interest in following up with implementation of legislation by the members themselves.

5.1 Recommendations

The National Assembly and State Houses of Assembly may include in our laws clear reporting requirements in the process of law making as we have observed from the CARES Act, 2020 and the Leahy Laws; The Management of the National Assembly may need to organize a workshop on the stages of the legislative process for members elect at the beginning of every session of the National Assembly stressing the importance of the implementation stage; both the management of the National Assembly and legislators need to come together to put in place an organized system of oversight (scrutiny procedure with particular focus on post legislative scrutiny), this is necessary to address the gap in the legislative cycle in the Country; The National Assembly and State Houses of Assembly may also need to look into adoption and practice of effectively using review and sunset clauses in legislation as this will aid in the implementation of laws;

The Law Reform Commission may need to focus and identify laws already passed but not implemented and thoroughly scrutinize them. The Commission also needs to be adequately funded by the Federal Government; and The Executive should give the legislature a free hand in carrying out its oversight functions. Section 88 of the 1999 Constitution may be amended to allow the legislature carry out scrutiny even when laws are not being made.

The recommendations will enhance post-legislative scrutiny in Nigeria and ensure that our laws are effective and functional. It will also close the gap in the legislative cycle.

5.3 Contributions to Knowledge

The contributions of this research work to knowledge are that it helped to interrogate the basic role of post-legislative scrutiny in the process of law making through the oversight powers of the legislature. It also critically did an analysis of the Nigerian system with particular focus on the CARES Act /Leahy law and how these laws have contributed greatly to the implementation of laws in the United States of America.

The work also revealed some of the challenges of post-legislative scrutiny in Nigeria. It equally proffered solutions and recommendations to these challenges.

5.4 Recommended Areas for Further Research

Post-legislative scrutiny is a new field around the world and hence there is limited literature on it. A study on the workings of the implementation procedure of legislation and the need for reporting requirements imbedded into legislation may be helpful in the law making cycle.

This is important because of the functionality of laws; so that the legislature does not make laws that maybe unnecessary, ineffective or even laws that will not check against waste, fraud, abuse or mismanagement of funds.

5.5 Conclusion

The legislature plays a vital role in the law making cycle which clearly ends with the implementation of the law. However, the legislative cycle is confronted with many challenges with particular focus on post-legislative scrutiny. One crucial challenge is the fact that legislators worldwide often focus on passage of laws while forgetting or leaving the process of the implementation of the law in its entirety to the executive. In addition, most legislators are not aware that a reporting requirement in the process of implementation can be imbedded in a particular legislation to ensure accountability, transparency and effectiveness of the law.

An analysis of post-legislative scrutiny in Nigeria and lessons from the United States practice has clearly revealed through the CARES Act the importance of scrutiny in the process of implementation of laws by the legislature.

In the final analysis, the research has achieved its general aim and objectives in chapters one to five. The research questions raised were answered and the significance of the research to the Nigerian people/system was revealed in the body of the work

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