AN EVALUATION OF THE PRACTICE OF DRAFTING CONSTITUTIONAL REVIEW IN NIGERIA AND THE UNITED STATES OF AMERICA

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CERTIFICATION

Be it certified that this dissertation titled "An Evaluation of the Practice of Drafting Constitutional Review in Nigeria and the United States of America" is the original work of Patrick Chinedu IBUZOR with Matric No: - PG/NLS/2015087. It is further certified that this thesis has not been submitted 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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APPROVAL

This dissertation titled "An Evaluation of the Practice of Drafting Constitutional Review in Nigeria and the United States of America" by Patrick Chinedu IBUZOR has been approved for the award of Masters of Laws in Legislative Drafting (LLM), National Institute of Legislative and Democratic Studies/University of Benin.

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DEDICATION

This research work is dedicated to my parents Late Mr. Etukokwu Joseph Ibuzo &Mrs. Onyeka Loretta Ibuzo and brothers Engr. Charles Ibuzor and Emmanuel Ibuzo for their immeasurable care.

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LIST OF ABBREVIATIONS

AC	Appeal Cases
AG	Attorney General
All ER	All England Law Reports
KB	Kings Bench
NILDS	National Institute of Legislative and Democratic Studies
NWLR	Nigeria Weekly Law Report
PLAC	Policy and Legal Advocacy Centre
USA	United States of America
WLR	Weekly Law Reports

ABSTRACT

Societies react to changes to its environment by adjustments, but leading the adjustments among other factors are laws with constitutions as the flagship. This requires that constitutions have to be adjusted to allow societies achieve their aspirations. Nonetheless, how this constitution adjustment also known as constitution review are put down in documents for effectual comprehension of society varies from one country to another, giving rise to the objective of this research which is to evaluate the sufficiency and paucity of the constitution review drafting style of Nigeria and the United States of America in terms of forms and methods of drafting them and the use of legislative structure and plain language. Thus, due to the increasing need for constitution review provisions to promote accessibility of review bills, ensure clarity in the transition from the old provisions to the new ones, and in the application of legislative structure, this research is apt as it proffers solutions to these impinging problems in drafting constitution review in Nigeria and the United States of America.

For effective research on the topic, doctrinal research methodology was considered, while primary sources of data such as constitutions and secondary sources such as text books were consulted. This is possible because this research does not require interview or responses of individuals or group in the subject.

The outcome of these assessment and exploration presents clear divergence and convergence practices in the application of legislative structure and plain language, and in the methods and forms in which review of constitutional provisions are drafted. On this backdrop, this research found among other things that the incremental form of drafting constitution review provisions in Nigeria proves riotous as it promotes proliferation of constitution review bills. It is also found that there is strong palpability of combining direct and indirect methods of drafting constitution review in Nigeria and the United States of America for better understanding of its impact by their legislative audience. And while the use of plain language has gained momentum in global legislative drafting, the scheme is still oscillating in both jurisdictions.

Therefore, it is recommended that drafters of Nigerian constitution should revert to non-incremental form of constitutional alteration system that discouraged proliferation of constitution review bills; that direct and indirect methods of drafting constitutional review be fused together to produce a third but more perfect option for drafting constitutional review; and that plain language should remain the focal point in that regard. Research on this topic is virtually novel, as a result, there is an opportunity to expose in comparative sense knowledge on various styles of drafting constitutional review applicable to both countries. In addition, it is anticipated that further research are required on certain areas of the subjects for full development and broadening of knowledge and practice of drafting constitutional review provision.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Societies evolve with time and humans are not God with clairvoyant abilities - humans cannot always anticipate future contingencies or events, no matter how they try. Since constitutions are made to govern humans in ever changing environment, it follows that constitutions need continuous modifications to suit the changing environment. By constitution review, new problems found in existing constitutions maybe corrected in the amending constitutions, new rights, obligations and powers may be created, loopholes or lacunae may be filled and fixed, and powers may be increased or decreased.

Given the fundamental nature of constitutions and their roles in laying groundwork to shape and support the state, constitutions are often meant to be long-term, deeply rooted instruments that are more difficult to change than other forms of law. At the same time, an unchangeable constitution presents its own difficulties, potentially committing future generations to provisions which no longer serve the greater good or function as they should. Constitutions that lack flexibility present a risk of being violated or failing entirely when unforeseen circumstances arise. Therefore, most constitutions allow for review.[1]

In Nigeria, and the United States of America, the authorities to amend or review constitutions are derived from s9 of the Nigerian Constitution[2] and Art.V of the Constitution of United States of America.[3] Both constitutions nonetheless do not provide any model for drafting constitution amendments leaving both countries to determine what suit them most. Regardless what suits both countries, constitution drafters have to understand the forms and methods of drafting

[1]Nora Hedling, *The Fundamentals of a Constitution the International Institute for Democracy and Electoral Assistance* (International IDEA, 2016) 1.

[2] CFRN1999. https://www.constituteproject.org accessed 27 December 2022

[3]The U.S. Constitution, https://www.constitutioncenter.org accessed 27 December 2022

constitutional review as well as other informal or extra-constitutional, "off-the-books" developments[4] through which constitutions may be reviewed.

Again, drafters are also required to have the abilities to comply with in-house drafting style and the use of drafting manual. This is because there are a number of formal differences, in Nigeria and the United States of America in the manner in which constitutional review are both originally drafted and written down before and after they become law. For example, while in Nigeria, constitutional review originates as bills and become law in the form of Acts of Parliament, in the United States of America, a proposed amendment originates as a special joint resolution of Congress.[5]

Thus, while there is global shared view on reasons for constitution review, there may not be a uniform pattern for achieving drafting of constitutional review among countries leading to every individual jurisdiction forging a system according to its peculiarity. For some countries, a system may be adopted from another country's system and for others, from colonial past, or in some cases, a hybrid system may be invoked.

Nigeria apparently adopted the British legal system- a system which was introduced by the effect of colonization, but at the same time, Nigeria practices a presidential federal system of government mirrored from the United States of America. The United States of America on its part though colonised by the British has long jettisoned many of their master's legal systems, instead the country has become a lodestar for presidential democratic governments with a distinct style of drafting constitution review different from the United Kingdom's version.

For both countries, their constitutions are similar, supreme and ostensibly rigid, but there exist identifiable differences and similarities in ways in which constitution review provisions are drafted in both jurisdictions, prompting an evaluation of the practice. While it may be correct to stress that no country's concept of drafting constitution review is the best, this research will deconstruct the strengths and weaknesses of constitution review drafting styles of both

[4] Stephen M. Griffin, *The Nominee Is . . . Article V, in Constitutional Stupidities, Constitutional Tragedies* (William Eskridge& Sanford Levinson 1998)51- 52.
[5] Discussion Document: *Drafting of the Constitution* – Topics, Detail, Language Cp108055.Mem.

jurisdictions. The evaluation of the practice in both jurisdictions has become paramount and this research seeks to underscore the excesses and insufficiency of this regime in terms of the methods and forms of drafting constitution review as well as the use of legislative structure and plain language. And the outcome of this research will afford opportunities for cross learning while identifying areas for improvement for both countries and elsewhere.

1.2. Statement of the Problem

A Constitution of a country is its fundamental law, the *fons et origo* of all laws, the exercise of all powers, and the source from which all laws, institutions and persons derive their authorities.[6] But constitutions are not cast in stones, they are made by humans for a definite purpose, and when achieved, the quest for modification or adjustment may emanate. A constitution may be filled with lacuna, defects, and injurious things or may have outlived its usefulness, when these are the circumstance, one thing comes to mind, and that perhaps is constitution review.

But how the drafting of review provisions is penned down is a different case. Both in Nigeria and the United States of America, constitution review are made in different forms: incremental and non-incremental forms with the former the extant practice in Nigeria which has caused chaos and proliferation of Bills in one constitution review cycle, unlike in the United States of America where all constitution review are drafted on one constitution proposal document, thereby limiting potential for increased constitution review Bills.

There is also a concern with the methods of drafting constitution review with both direct and indirect methods not answering all questions as regards the preservation of review provisions and its easiness in reading same. And, even as the use of plain language has fairly become a tradition in legislative drafting, both countries have not shown tendencies for full compliance, particularly with gender neutral drafting, and just as the audience in both countries have yearned for more understanding of constitution review provisions chaperoned by good legislative structure, Nigeria numbering style is creating more confusion than solution and for United States of America, paragraphing system is almost jettisoned. These have formed the major problems this research is keen to unravel and perhaps proffer solutions to.

[6] *Miscellaneous Offences Tribunal v Okoroafor* [2001]8 NWLR (pt.745)295, 350.

1.3. Research Questions

This research work attempts to answer the following research questions:

i. What are the comparative forms of drafting constitutional review provisions applicable in Nigeria and the United States of America?
ii. What are the comparative methods of drafting constitutional review provisions in Nigeria and the United States of America?
iii. What are the evaluative difference and similarities in drafting legislative structure for constitutional review in Nigeria and the United States of America?
iv. What lessons can Nigeria learn from the United States of America's use of plain language in drafting constitutional review provisions?

1.4. Aim and Objectives of the Study

The aim of this work is to explore and assess the efficiency and paucity of drafting styles for constitutional review in Nigeria and the United States of America.

The following are the objectives of this work:

i. To understand and appraise the different forms of drafting constitutional review provisions in Nigeria and the United States of America.
ii. To examine different methods of drafting constitutional review provisions in Nigeria and the United States of America.
iii. To explore and evaluate the difference and similarities in drafting legislative structure of constitutional review in Nigeria and the United States of America.
iv. To provide insight to the areas of improvement for Nigeria form the United States of America's use of plain language in drafting constitutional review provisions.

1.5. Significance of the Study

The outcome of this research work is very important to the Nigerian, and American societies as well as global community. It will provide insight and comparison on how constitutional review provisions are drafted in both Nigeria and the United States of America. In this regard, it will offer vital information to both countries and indeed other jurisdictions on how best to draft constitutional review provisions in their domain.

1.6. Scope and Limitation of the Study

Research on drafting style of constitutional review is an informative concept; however, the scope of this research work was focused on the evaluation of this practice in Nigeria and the United States of America in terms of federal constitutions.

Undeniably, this research work suffered some limitations or setbacks such as scarcity of research materials on the topic. But to mitigate the impact it would have had, internet sources played significant role in supplementing with other available materials.

1.7. Research Methodology

The research methodology employed in this work is the combination of qualitative and quantitative research methodologies with data collection techniques as documents; for example, statutes. Thus, the research is more quantitative methodology orientated because the work is focused on realities which is objective and can be observed or perceived by senses. However with the systematic collection, organisation and interpretation of textual materials derived from written materials and talks in the exploration of meanings of social phenomena, qualitative methodology was called-in.

As for sources of data, primary and secondary sources applicable in doctrinal research method were collocated. Doctrinal research is concerned with the analysis of legal doctrine and how it has been developed and applied.[7] It is research that is carried out on a legal proposition or propositions by way of analyzising the existing statutory provisions and cases through logic (reasoning).[8] It is concerned with finding the law and texts, analyzing them and deducing logical inference from them.

Legal doctrines basically help to clarify ambiguities within rules, placing them in a logical and coherent structure while describing their relationship to other rules. The determination of which rules of law to be applied in a particular situation is made easier by the existence of legal

[7] Amrit Kharel, *Doctrinal Legal Research*<https://www.researchgate.net/publication/323762486_Legal Research>accessed 4 December, 2022.
[8] ibid.

doctrines such as offer, acceptance, negligence, consideration, estoppels and so on. Doctrinal legal research helps to improve the substantial part of the law by enriching legal contents and interpretation of statutory provisions.[9]

Kharel highlighted some of the purpose of the doctrinal research methodology which are to construct new legal theories, principles and doctrines, to test them and add new knowledge in the legal profession; to maintain continuity, consistency and certainty of law; to resolve frequent client matters as the outcomes are more predictable due to its focus on established sources; to develop a theory that tries to explain how law or areas of law fit together; to critically examine the judicial opinions, conflicting decisions of courts and suggest the resolution to those conflicts; to expose uncertainties and contradictions within a body of law, legal practices or institutions and attempt to relate them to larger psychological, social, or philosophic difficulties.[10]

The rationale for using this methodology is because it focuses on a thorough enquiry of legal values such as focus on clarity in drafting constitutions, and legal principles such as plain language drafting. It also includes the use of existing legal texts like statutes (Nigerian and United States of American Constitutions) case laws and other legal sources. Unlike the non-doctrinal research method; it does not require the use of interview or questionnaire.

The research also used primary and secondary sources of data collection, namely statutes, internets, articles, case laws, textbooks (legal literatures) and other scholarly materials on the subject matter. Also, the researcher presented various views sourced from different literature on the subject of this research work and appraised them. The rationale for using the primary and secondary source of data collection is because the research is doctrinal. As such, it requires an analysis of legal principles in relation to existing statutes.

[9] ibid.
[10] ibid.

1.8. Organisational Layout

This research work is organised into five Chapters for a better understanding of the subject matter of the research.

Chapter one deals with the general introduction of the topic, the background of the study, the statement of the problem, the research questions, and the aim and objectives of the study. Others includes: the significance, scope and limitations of the study and research methodology applied. The purpose of this chapter is to give general introduction or information regarding the research topic. It also states the problems or the underlining issues that necessitated this research which is an evaluation of the practice of drafting constitutional review in Nigeria and the United States of America. The aim of this research is to explore and assess the efficiency and paucity of drafting styles of constitutional review in Nigeria and the United States of America. The research methodology employed is the combination of qualitative and quantitative research methodologies while primary and secondary sources of data applicable to doctrinal research method were used.

Chapter two focuses on literature review and this includes conceptual, theoretical and historical framework of drafting constitution review in Nigeria and the United States of America. It also contains review of related literature. The general purpose is to introduce the legal principles of the research and relevant laws while also looking at relevant theories and literature.

The research reviews the literature of scholars who are relevant to the research. The conceptual framework defines the context which some words and phrases are used in the research; and the nature, scope of keywords and phrases are used in the research. There is also the historical development of constitutional review drafting in Nigeria and the United States of America, while the theoretical framework focuses on the divergent views and jurisprudence that are relevant to the research topic.

Chapter three discusses the style of drafting constitutional review in Nigeria and the United States of America. The general purpose of this chapter is to provide the points as well as explanations to the various drafting styles applicable in constitutional review drafting of both

jurisdictions. They include: the forms and methods of drafting constitutional review and the legislative structure and principle of plain language used in that regard.

Chapter four focuses on the comparative evaluation of drafting styles of constitutional review in Nigeria and the United States of America. It appraises the forms and methods of drafting constitutional review provisions of both countries. It also provides the assessment of the use of plain language and legislative structure in drafting constitutional review in both domains while identifying and elucidating lessons Nigeria could possibility learn from the practice in the United States of America.

Chapter five contains the findings, conclusion and recommendations. The general purpose of the chapter is to summarise the research work, provide findings and recommendations and how the conclusion flows logically with the chapters. The chapter will confirm that the aim or the general purpose of the research was achieved.

CHAPTER TWO

THEORETICAL AND HISTORICAL FRAMEWORK

This chapter is focused on the theoretical and historical framework of drafting constitution review in Nigeria and the United States of America as well as the review of related literature.

2.1. Theoretical Framework

a. Constitutional Amendment and Constitutional Review

The concepts of constitutional amendment and constitutional review have always created confusion. However, it can be augured that both terms mean the same thing. According to Black's Law Dictionary, "amend", is defined as a verbal form of amendment, as to make right; to correct or rectify. It also defines it as to change the wording of; specifically, to formally alter (a statute, constitution, motion, etc.) by striking out, inserting, or substituting words.[1]Amend is to make changes, termed amendments, in the text of a legislative document.[2] A constitution is a body of basic laws and principles that describes the general organization and operation of the state, containing framework under which all regulations, legislation, institutions, and procedures operate as well as fundamental principles and norms of a country.[3] Amendment of constitution therefore can be said to mean an improvement, change or modification of existing constitution to cover emerging issues or address lapses or problems that have arisen in which the existing constitution did not anticipate.

Thus, review according to Collins dictionary is to make a revision of something that is written or something that has been decided, to make changes to it in order to improve it, make it more modern, or make it more suitable for a particular purpose.[4]

What constitutional amendment and review portents are basically the same. The difference is primarily based on the procedure of performing each one. Scholars have suggested how to differentiate amendment from review, constitutional designers have entrenched distinct

1Bryan A. Garner and others, Black's Law Dictionary (6thedn, Thomson Reuters 2009).
2Tonye Clinton Jaja, A Dictionary of Legislative Drafting and Law Making Terms: A Lexicon for Legislative Drafting Lawyers and Legislators (Lambert Academic Publishing 2012).
3Nora Hedling, The Fundamentals of a Constitution the International *Institute for Democracy and Electoral Assistance* (International IDEA, 2016) 1.
4<https://www.collinsdictionary.com/us/dictionary/english/constitutional-revision> accessed 17th November 2022.

procedures for each, and judges have applied both of these concepts to actual cases and controversies. Yet, even at its best, the distinction is unclear and it raises more questions than it offers answers. The possible difference is that an amendment should be understood as an effort to continue the constitution-making project that began at the founding moment, while a review should be understood as an effort to unmake the constitution by introducing an extraordinary change that is inconsistent with the fundamental presuppositions of the constitution.[5] The interpretation of the distinction between constitutional amendment and constitutional review nonetheless is susceptible to exploitation.

b. Drafting Style for Constitutional Review

There is no best definition of drafting style just as there is no best drafting style. The focus has always been on what jurisdictions make out of it. However, some writers have developed opinion to help make sense of the concept. According to Voermans Wim, drafting style is about determining what legislative style is and it requires looking at the way legislation is drafted. He opined that:

> Drafting style concerns the wording (general use of language, definitions, terminology, etc.), structure (its divisions, ways of referencing, etc.), and superstructure (its ways of presenting its relation to and the hierarchy between it and other legislative texts, etc.) of the legislative text, as well as its legal-cultural identity (within its own legal system and how that system is influenced by its origins, for example in the civil or common law tradition). Defining drafting style in this way reveals that it constitutes a set of legislative features that are highly dependent on the language, culture, both legal and political, of a society. So much so that it begs the question whether one can learn from, let alone compare, legislative styles.[6]

From this theory, two things are clearly established: First, the theorists did not distinguish between constitutional drafting style and legislative drafting style; this perception is true because there is literally no distinguishable difference of both terms in many jurisdictions. Invariably, the theorist envisages that drafting style for constitutional review and drafting style for legislative amendment are the same since they both apply the same legislative

[5]Richard Albert, *Amendment and Revision in the Unmaking Of Constitutions, Comparative Constitution Making,* (Edward Elgar Publishing, 2019) 117-140.
[6]Voermans Wim, 'Styles of Legislation and their Effects' [2011]: (32) (1) Statute Law Review; 38.

structure and principles. Secondly, his theory seems to be supportive of the view that constitutions are legislations because they are made by parliaments though the former is superior to the latter.

Another theorist is Bakshi, Parvinrai Mulwantrai, he believed that:

> There is no uniformity of structure and arrangement of various parts of a legislation followed by various countries. For examples in England, the definitions are kept at the end of the Act, in India, and in recent years also in the United States, they are inserted at the beginning. Similarly, the short title of Act finds a place as the first section in India and in the United States, while in England it generally appears in the last section.[7]

From Bakshi's theory, drafting style requires the acceptance and adoption of convention or form. This view also resonates in the work of Reed Dickerson where he stated that 'there is, of course, no all purpose arrangement that is most suitable for all set of ideas…however, the draftsman should make sure that he is reflecting the point of view that best advances the purpose of this client'.[8] In other words, drafting constitutional review has to follow an acceptable format established by parliaments who are often the clients. Non-compliance may put question mark on the professional competence and expertise of the drafter.[9]

In analyzing Voermans Wim's view that drafting style constitutes a set of legislative features that are highly dependent on the language, culture, both legal and political, of a society and Bakshi's perception that drafting style requires the acceptance and adoption of convention or form, it can be deuced that drafting style for constitutional review requires that each country provide what is acceptable in their jurisdictions as long as they adhere to the acceptable benchmark of drafting including effective communication.

The theories of Voermans Wim and Bakshi are immensely important to this research because the research seeks to explore and assess the drafting style for constitutional review in Nigeria and the United States of America. Their views will help provide insight to the perceived standard drafting style and how they are used in Nigeria and the United States of America. In

[7]Bakshi Parvinrai Mulwantrai, *An Introduction To Legislative Drafting* (NM Tripathi 1972).
[8] Reed Dickerson, *An introduction to legislative drafting (*St Paul Minnesota west publishing Co. 1981) 57.
[9]Revised Practical Guide on Legislative Drafting (National Institute for Legislative Studies, 2014).

the subsequent chapters of this research, these theories will serve as bases for assessing style used in drafting constitutional review provisions in both countries.

c. Legislative Structure

Drafting constitutional review is usually not a distorted exercise. They are done in systematically structured manner to enable audience to positively make sense of the draft. To this end, Stijn Debaene, Raf van Kuyck and Bea Van Buggenhout in their work expressed that:

> The rules concerning the design and structure of a bill are related to two aspects. Firstly they concern the general composition of the bill. From this point of view a bill consists of a title, an introductory part (header), the main part or body of the bill and the final (subscribing) part (footer). Secondly, each of these parts is submitted to a further composition and layout. The title, for example, should contain the nature of the bill (statute, decree, regulation, etc.) and a short description of its content, again submitted to specific rules. The main part or body of the bill contains an exhaustive structure (definitions, field of application, new provisions and final provisions) and an exhaustive division (part, book, title, chapter, section, article, paragraph, etc.)[10]

Stijn Debaene, Raf van Kuyck and Bea Van Buggenhout's theory conforms to the existing principle of drafting constitutional review provisions which promotes the idea of the use of structure that includes: the preliminary provisions, principal provisions and in some cases miscellaneous provisions and final provisions. From the theorists view, drafting constitutional review provisions in this way would enable the readers distil each part of the provision and in the process promote clarity and cleanliness in the constitutional review document.

Karpen Ulrich's view on the structure of a draft is equally considered in this research. His theory supports much of what Stijn Debaene and others have expressed above but he

[10]Debaene Stijn and others. 'Legislative Technique as Basis of a Legislative Drafting System' [2000] (9) (2) Information & Communications Technology Law; 149.

furthered the conversation by defining some of the roles played by substructures of provisions. Karpen Ulrich opined that:

> The content of the draft bill must be presented in a well organized and systematized manner. The drafter has to keep in mind that law drafting follows a special method and is a technical matter. A drafter should know how a draft in general is structured and then apply this to his draft. As a rule, the draft shall contain the following parts: Title, Preambule, Introductory provision, Articles covering general provisions and detailed subject matter provisions, Penalties, Transitional and final provisions and Annexes…The title of the draft must be short and clearly describe the object of the regulation. The title is the identifying element of the draft. It should be descriptive, summarizing the matter in one or two words. The preambule of the legal Act, if there is any, shall evoke the final results Parliament had in view upon approval of the law, contain the rationale of the law and the social, political, economic, cultural or other motivation. Constitutions usually are introduced by preambules. The preambule in most states is part of the law and useful for interpretation.[11]

Karpen Ulrich's theory presents a generally acceptable practice in drafting legislations including drafting of constitutional review provisions. This is because legislations must have structure but where a particular structure stays on a draft is entirely a different matter. Additionally, he was right to have aligned that legislations must have a title which is part of the introductory provision. This view is well buttressed by Thornton when he said that 'a comprehensive long title may serve as a valuable purpose in assisting to communicate the intention and spirit of an Act'.[12] Karpen Ulrich was also right about his assessment on preamble as an integral part of a constitution; nevertheless, he did not mention preamble as a perquisite for drafting constitutional review provision.

The theories of Stijn Debaene and others, and Karpen Ulrich are very pivotal to this work. However, the perspective developed by Karpen Ulrich embellished the concept where he stated that the content of the draft bill must be presented in a well organized and systematized

[11]Karpen Ulrich, 'Instructions for law drafting' [2008](10) Eur. JL Reform; 163.
[12]GC Thornton, *Legislative Drafting* (Butterworths, 1996) 193.

manner while addressing what roles drafters have to play in that regard. As this research is focused on comparative evaluation of drafting constitutional review provision in Nigeria and the United States of America, these theories have set the basis for comparison of both countries in terms of legislative structure.

d. Method of Drafting Constitutional Review

Different jurisdictions have ways of drafting constitutional review provisions. They include textual method and non-textual method, and legislative amendment and statutory amendment. These views have been stressed by some writers including Crabbe and Arthur J. Rynearson. According to Crabbe, legislations are amended by textual and non-textual methods. He opined that:

> There are two kinds of amendments: textual and non-textual amendments. A non-textual amendment has a separate identity. It does not become part of the Act it purports to amend yet it alters that Act. A textual amendment…amends an existing Act by specifically stating
>
> (a) The section where the amendments are to be made, and how the amendments should be made; or
>
> (b) Substituting a completely new section or subsection for the existing section or subsection as it will read after the necessary amendments have been made.[13]

Textual amendment explains in a shortest possible form what a constitution sets to remove or insert in the constitutional review document. According to H. H. Marshall and Norman S. Marsh, textual method is the 'specific and seriatim insertion, substitution or deletion of words, paragraphs, sections or subsections in or from the existing constitution, in the same way as a new spare part is inserted into an engine in the place of an old one'.[14] This view was also reechoed by Ian McLeod when he stated that 'textual amendment either inserts words into, or deletes words from, or both inserts into and deletes words from, an original provision'.[15]

[13] V. C. R. A. C. Crabbe, *Legislative Drafting* (1st Edn, Cavendish Publishing Limited, 1993)137.
[14] H. H. Marshall and Norman S. Marsh, 'Case Law, Codification and Statute Law Revision' *Report of Third Commonwealth and Empire Law Conference*, 406, 425.
[15] Ian McLeod, *Principles of Legislative and Regulatory Drafting* (Hart Publishing 2009).

On the contrary, Arthur J. Rynearson proposed two methods in which legislations such as constitutional review may be drafted. He explained that:

> As a legislative strategy, it is ordinarily better to "piggy-back" on a bill already being considered by a House of Congress or one of its committees instead of starting from scratch with the introduction of a bill; *this method is known as legislative amendment*. Statutory amendment is an amendment to existing law. It is made by striking, inserting, or striking and inserting a word, phrase, or block of text of an earlier enacted statute. Statutory amendments do not use other terms such as "deleting", "omitting", "replacing", or "substituting", as statutory Amendments parallel the terminology of legislative amendments.[16]

This type of constitutional review is peculiar in the United States of America. From Arthur J. Rynearson theory, it would be deuced that both legislative amendment and statutory amendment could be applied in constitutional review exercise in that constitutional proposal can be reviewed during the amendment process while the reviewed proposal become part of the existing the constitution.

The theories of Crabbe and Arthur J. Rynearson are very crucial for this research work as both writers identified two separate set of methods that have formed the basis for comparative evaluation of drafting constitutional review provision in Nigeria and the United States of America. The evaluation will also help to determine a preferred approach to the scheme.

e. Plain Language Theory of Drafting Constitutional Review

Plain language is an essential tool for drafting constitutional review provisions. Though the concept has received credible criticisms but that have not eroded the genuine impact it is creating on the audience. While many theorists have written on the subject, a few of them are discussed in this research. According to Joseph Kimble:

[16] Arthur J. Rynearson, *legislative Drafting Step-by-step (* International Law Institute, Washington D.C., Carolina Academic Press, Durham, North Carolina 2013), (emphasis added)

> Plain language has to do with clear and effective communication nothing more or less. It does, though, signify a new attitude and fundamental change from the past. More than that, they are capable of great power and dignity.[17]

Constitutions are flagship of most legislation and there is no better place for citizens to begin to understand the law they are governed other than from the constitution. To encourage this concept in drafting constitutional review provision, Kimble was right with the emphasis on effective communication. His view has received support from Kenneth L. Rosebaum when he stated that 'drafters should aim to make the law understandable to the people it affects. Plain language is easier for most people to understand. Some drafters take a strange pride in writing text that only another lawyer can understand. These drafters give us jargon and sentences that run on without end'.[18]

On the contrary, the concept of plain language has not suited well with some theorists. Leading them in this research is Brian Hunt. He stated thus:

> A concept expressed in plain language, will not always carry a clear and unambiguous meaning. Utilizing plain language in legislative drafting is likely to increase the incidence of vagueness and ambiguity in legislation – this is a consequence which drafters cannot allow to occur. We must recognize that plain language is not the answer to all our problems. And in particular, it is not the answer to the problem of turgid and inaccessible legislation.[19]

Brian Hunt's view may be constructive but with growing concern for simplification of constitutions, his theory may only serve as advisory. However, in drafting constitutional review provisions, certain principles of plain language such as jargons (herewith etc.) are deliberately avoided to preserve consistency.

That notwithstanding, the view of Joseph Kimble is important to this research work since it is focused on effective communication and drafters duty to ensure constitutional review

[17]Joseph Kimble, 'Answering the Critic of Plain Language' [1994] (5) Scribes J. Leg; 51.
[18] Kenneth L. Rosebaum, Legislative Drafting Guide: A practitioner's view, A Resources for People working on International Technical Assistance Project, *FAO Legal papers*, 10.
[19] Brian Hunt, *Plain Language in Legislative Drafting: An Achievable Objective or a Laudable Ideal? Presented to the Fourth Biennial Conference of the PLAIN Language Association International*, (September 27, 2002) 1-6.

provisions are understandable to the people they affect. Additionally, this theory will serve as the basis for evaluating how consistent Nigeria and United States of America are in using plain language in drafting constitutional review.

2.2. Historical Development of Drafting Constitutional Review in Nigeria and the United States of America

It is an established principle that Constitutions provide powers to governments and their citizens. But constitutions are usually not utopian; as humans and their ecosystem change so are constitutions. For many centuries and in recent times, different constitutional reviews have been made at different times in Nigeria and United States of America to suit their past needs and at the same time, look beyond the moment. The review of sections, subsections and provisions of these constitutions have put both countries on the current pedestal that they stand on today.

2. 2.1. Historical Development of Drafting Constitutional Review in Nigeria

The 1999 Constitution is the current constitution of Nigeria. It was promulgated by the Supreme Military Council which successfully ushered in the Fourth Republic on the 29th May, 1999.[20] Leading up to the promulgation, Constitution Debate Coordinating Committee was set-up to by the Military government to redraft the 1979 Constitution which is generally believed to be a mirror of 1999 Constitution. As it is not a largely democratic rooted document, the constitution has witnessed four reviews with the possible five in 2023.

In summary, Nigeria witnessed the first, second and third constitutional review during the tenure of the Sixth National Assembly that spanned from 2007 to 2011. The Seventh National Assembly launched an unsuccessful constitutional review regime while the Eight National Assembly conducted the fourth constitutional review from 2011 to 2015. Currently, the Ninth National Assembly is making effort to conclude a potential fifth constitutional review.

a. The First, Second and Third Constitutional Review (2007-2011)

These constitutional reviews followed much the same drafting styles in terms of methods of review, forms of review, structure and the use of plain language.

[20]Ibrahim Matazu Suleiman, 'Nigeria's Constitutional Development and Constitutionalism' [2022](9)(1).<https:www.studocu.com/in/document/university-of…> accessed 25th December, 2022.

The method of drafting this set of constitutional review provisions was textual or direct method; a style inherited from the United Kingdom. In this regard, some words, phrases, sections and paragraphs were inserted, deleted or substituted. For example, s6(5) (cc)[21] was inserted into the Constitution (Third Alteration Act)[22] demonstrating that textual method of constitutional review was applied. Also, the constitutional review scheme observed non-incremental form of constitutional review allowing for all items to be listed on one constitutional review bill.

Additionally, the 1999 constitution having been drafted in "codified" approach, (which provides far greater detail or specificity regarding the intended meaning and operation of relevant constitutional norms),[23] encouraged the same pattern to be used in this set of constitutional review as can be observed in the provision of s81 (3)[24] (First Alteration Act) detailing the authorization of expenditure from Consolidated Revenue Fund. The section explained in full what needs to be done with the amount standing to the credit of the mentioned bodies without empowering the legislature to enact any other law in that respect.

The use of plain language is a noticeable feature in this scheme. While in some of the provisions, the principle was observed but in others, it was abandoned. For example, s272 (3) (First Alteration Act) demonstrates in clearest possible terms the power of the Federal High Court to determine whether a seat of a member of the House of Assembly or Governor or Deputy Governor has become vacant. On the other hand, s145 (First Alteration Act) breached the gender neutrality rule when it subsequently referred to the President with the pronoun 'He'.

The constitutional review was drafted with legislative structure such as paragraphing, provisos, numbering, punctuations, definition provision and schedules. For example, the items in s84 (4) (Third Alteration Act) were listed in paragraphs. Some of the numbering patterns were not elegantly drafted as can be observed in s135 (2A) (First Alteration Act), while in s228 (a) and (b) (First Alteration Act) there is compliance to punctuations rules with a hyphen introducing the paragraphs which ended with semicolon.

[21] *CFRN*, 1999; Policy and Legal Advocacy Centre (PLAC) www.placng.org
[22] ibid.
[23] Rosalind Dixon, *Constitutional Drafting and Distrust*, (Oxford University Press and New York University School of Law, 2016) 820.
[24] *CFRN*, 1999; *op cit*, 21.

b. The Fourth Constitutional Review (2015-2019)

This regime witnessed similar drafting style as was the case of the first to third constitutional review albeit with marginal improvements and differences.

The form of constitutional review adopted was incremental style of drafting. In this regard, items for constitutional review were drafted on different bills for easy assent of the President of Nigeria. Similarly, the codified approach was adopted to suit the natural style of 1999 Constitution. This is demonstrated in s225A (Fourth Alteration No.9) which empowers the Independent National Electoral Commission (INEC) to de-register political parties; explaining in detail the powers of the Commission in that respect. Also, the method of amendment was textual method similar to other previous reviews.

The principle of plain language has regular presence in the scheme. To demonstrate clarity, s37 (3) (Fourth Alteration No.16) for example provides the term of a President who completed the term of another President. The section began in active voice and it is drafted so clearly that any person could understand the provisions.

The structure of the constitutional review witnessed the use of provisos, marginal notes, numbering and paragraphing. Paragraphing provides cleanliness in legislations as that was the case in the review of s121 (3) (Fourth Alteration No.4). The section was drafted in 'sandwich' style allowing the listed items in the paragraphs to be pressed between the first line and the last set of sentence of the section. Also, punctuations were reflected in the review. This is observed in s225A (Fourth Alteration No.9) on de-registration of political party. In the section, each paragraph is numbered and each lead sentence has hyphen following the rest of the paragraphs. The most visible feature of the fourth review is the numbering. In this respect, some sections are numbered together with alphabets and each alteration seems to have numbers attached to them. For example, s225A has an alphabet 'A' and the section is numbered (Fourth Alteration No.9)

c. The Potential Fifth Constitutional Review (2019-2023)

The potential fifth constitutional review though an ongoing project will most likely adopt the same drafting style used in previous reviews. The textual or direct method of drafting constitutional review provisions will be adopted. This is demonstrated in the proposed review of s14 of the 1999 Constitution which intends to substitute the existing subsection (3) with a

new subsection "(3)".[25] In addition, incremental form of constitution review was used allowing all the 68 items to be drafted on different legislative bills for easy assent by the president of Nigeria.

Likewise, many of the bills reflected the principle of plain language in clarity, gender neutrality, and the use of active voice. These are demonstrated in the proposed review of s14 of the 1999 Constitution where the entire provision seeks to promote gender equity. The proposed substitution of the existing 14(3)[26] provides marginal note to enable readers at a glance make scene of the content of the subsection. Legislative structure such as marginal notes, paragraphing, numbering and explanatory memorandum featured on most of the bills. This can be observed in the proposed review of s42 of 1999 Constitution where the explanatory memorandum seeks to redress social, economic, educational or other imbalances in the society.[27]

2.2.2. Historical Development of Drafting Constitution Review in the United States of America

The supreme law of the United States of America is the 1789 Constitution. It is the first permanent constitution of its kind adopted by the people's representatives for an expansive nation. It has been reviewed only 27 times[28] by non-textual method. The first 10 amendments communally known as the Bill of Rights was ratified on December 15, 1791 and the rest of the review effected between 1795 and 1992. All of the amendments where drafted non-incrementally. Constitutional reviews to the United States Constitution are appended to the document;[29] though archaic, but acceptable in legislative context. Thus, due to close similarities of all the constitutional reviews drafting style, the historical development will be taken in one fell swoop.

The First Ten Amendment to Twenty-Seventh Amendment

The draft of the constitutional review has been consistent with non-textual method of review. In this respect, the reviewed constitution is affixed to the document; it does not review on the body of the existing constitution but on a different space in the document. This method of

[25]National Assembly Journal, Abuja, [2021] (HB. 1365) C 1033 (18) *National Assembly press;* 13.
[26] ibid.
[27] ibid.
[28]Kone Yusuf "*US Constitution"* (2018) (1 File) <https://www.academia.edu/39719932/US_constitution_History> accessed 28 December 2022.
[29] ibid.

amendment is evident by the review of the Twelfth Amendment[30] by the Twentieth Amendment s3[31] which allows the Vice President of the United States of America to replace the President without input from the Congress. In other words, Art.2 of the Constitution was reviewed by the Twelfth Amendment and the latter was reviewed by the Twentieth Amendment, in that order.

Additionally, the Constitution of the United States of America was drafted from the outset in a "framework-style" approach, (which provides only quite general textual guidance as to the meaning or operation of particular constitutional norms); therefore it was necessary that reviews of the constitution followed the same trend. In this regard, the first Ten Amendments otherwise known as the Bill of Rights provide basic right for American citizens while allowing other legislations to expand them. Again, notwithstanding the content of s4 of the Twentieth Amendment that allows the Vice-president of the United States of America to assume the post of the President in certain conditions, the provision also allows the Congress to make laws providing for the office of the President and Vice President when their seats are vacant, (laws which may not necessarily be in the constitution).

Plain language is fairly observed in the history of the United States of American constitutional review scheme. Notably, the constitution is recognized for its brevity and clarity, but not to mention its disregard for the use of gender neutral words. Also, it is elementary that plain language frowns at legalese, but the constitutional review in the jurisdiction uses legalese very cleverly. For example, the Second Amendment in the Bill of Rights ratified in 1791 used the word 'militia' and the Twelfth Amendment ratified in 1804 used the word 'quorum'. While it could be argued that both words are Italian words, it can be agreed that they now in English dictionaries.

The constitutional review scheme of the United States of America has maintained the same legislative structure from the First Ten Amendments to the Twenty-Seventh Amendment. The reviews are drafted in articles and sections, provisos, numbering etc. However, there is rare use of paragraphs especially where they are most needed. For example the Twelfth Amendment[32] is long that some provisions can be in paragraphs for easy reading and clarity.

[30] The U.S. Constitution, www.constitutioncenter.org
[31] ibid.
[32] ibid.

Similarly, the Seventh Amendment of 1913[33] is drafted in what look like sections or paragraphs but where not numbered. Again, the review provisions are largely lacking in marginal notes or headings.

2.3. Literature Review

Since the advent of constitutionalism, different scholars have written works on the methods and forms of drafting constitutional review provisions. Some have through their writings exposed the importance of principle of plain language and legislative structure in strengthening drafting of such documents. While there has been much research on these topics, few researchers have comparatively evaluated the use of these concepts in drafting constitutional review provisions in Nigeria and United States of America leading to the need to conduct this review.

One of the erudite scholars whose work is reviewed is D T Adem.[34] In his work titled 'Understanding of Bills' two methods of drafting amendment took a center stage where he provided definitions of the concept as well as the advantages and disadvantages of each method.

The author expressed that broadly speaking, there are two different methods of drafting amendment provisions or legislation. While one method is described as direct or textual, the other is indirect method. The author explained that a textual amendment means the specific and seriating insertion, substitution or deletion of word, paragraph, sections or subsections in or from the principal Act in the same way a as a new spare part is inserted into an engine in the place of an old one. In other words, it is a process of direct integration of new material into existing statute. He explained further that this process aids or facilitates the reading of the statute in its amended form as the old and the new provisions are integrated and constitute one text. On what he meant in practical terms, he identified means in which this method of amendment can take shape, they are by:

a. adding new parts, sections, paragraphs, sun-paragraphs, definition, words, phrase and schedules;
b. repealing provisions no longer required or no longer appropriate; and

[33] ibid.
[34] D TAdem, *Understanding Bills* (LexisNexis 2014) 181-186.

c. repealing the provision that no longer appropriate and replacing them with those that are appropriate.

He advised that the additional provisions that are required for the statute have to be placed into their logical positions in the text with those they follow. They also have to be numbered with appropriate letters to differentiate them.

In using textual amendment method, he elucidated that drafter should watch out for technical feature in the house-style of one's jurisdiction and that includes-

a. consistence in relation to the current formula in use;
b. where textual amendment has been made in the past, it will be unnecessary to refer to "the principal Act (as amended)" or cite the amending Act;
c. list in the margin note references to all the amendment as set out should be followed wherever possible;
d. the provision to be amended has to be identified by reference to particular word used in the original and such words must be enclosed between quotation marks here a good number of words are to be removed, identify the first and the last words to be omitted. In the case of words appearing more than ones in a provision, those to be amended should clearly and precisely be indicated; and
e. addition of section and subsection(but not words) must be must be introduces by a clone or a dash and must be enclosed between quotation marks.

On non-textual amendment method, he described it as mostly practiced in the United Kingdom (UK), defining it as a narrative statement in the amending law stating the effect of the amendment. The amending law does not purport to amend the principal legislation, nor does merge with it, but inherent in the method is the use of much referential legislation which much of the time become nihilistic. His view was supported by H. H. Marshall and Norman S. Marsh when they wrote that "often an act is heaped upon Act until the result is chaotic and almost unintelligible".[35]

To bolster his point through example, he cited section 4 (1) of the Civic Amenities Act, 1967 of UK which provides that:

[35]H. H. Marshall and Norman S. Marsh, '*Case Law, Codification and Statute Law Revision' Report of Third Commonwealth and Empire Law Conference* 406, 425

> The power conferred by subsection (1) of section 4 of the Historical Building and Ancient Monuments Act 1953 to make grants for the purposes mentioned in that subsection shall include power to make loan for those purposes, and references to grants in subsection (3) and (4) of that section shall be constructed accordingly.

The author's work in the subject concluded by stating: 'whatever is the method of amendment, difficult still arise in conveying to parliament the precise nature and effect of the amendment'. He admonished legislative drafters to be careful while drafting amendment.

The author's work is commendable and well supported by Crabbe where he stated that 'there are two kinds of amendments: textual and non-textual amendments'.[36] However, D T Adem was not particularly correct when he expressed that non-textual method of amendment is 'mostly practiced in the UK'. Perhaps, he did not consider the constitutional reviews regime of the United States of America which is roundly drafted by indirect method. Additionally, his work identified the advantages and disadvantages of textual and non-textual methods of drafting constitutional review; nevertheless, he avoided any consideration of merging the two methods of drafting for better and effective practice which is invariably identified as a gap in this research.

Another scholarly work is that of Arthur J. Rynearson.[37] In his book titled 'Legislative Drafting Step-by-Step' the author discussed the difference between ambiguity and imprecision and how they be avoid in drafting and I would add in drafting constitutional review provisions.

The author began with an interesting remark 'the difference between the almost right word and the right word is really a large mater- it's the difference between the lightning- bug and the lightning.' In relation to drafting style, he confirmed that the drafter confronts two obstacles to writing clearly, they are: ambiguity and imprecision. While different, they are not mutually exclusive. He identified ambiguity as a problem of multiple meaning, and imprecision as a problem of scope of application. If not avoided or dealt with, these twin evil as he labeled them, mean the legislative text will produce unintended consequences.

[36]V. C. R. A. C. Crabbe, *op cit*. 13.
[37]Arthur J. Rynearson, *Legislative Drafting Step-by-step (International* Law Institute, Washington D.C. Carolina Academic Press, Durham, North Carolina, 2013) 125- 136.

In his further discourse on ambiguity, the author explained that language is ambiguous if it may be construed to have two or more meaning. He pointed out that Ambiguity is Public Enemy Number 1 of the legislative drafter as it may occur as easily as making a poor word choice or misplacing a modifier while following certain rules of clear expression will lessen the risk of ambiguity. He was critical of the motion that legislative drafters may be attracted to ambiguous legislative text believing that a little bit of ambiguity is politically necessary to bring opposition legislator to pass the legislation; an approach he tagged as politics gone amuck! The author acknowledged that this idea will lead to further legal dispute that will be decided not necessarily by the legislature but by either the executive or the judiciary, which amounts to abdication of legislative power.

On imprecision, the author explained that the most common form of imprecise language is the words, phrase or sentence that is overbroad. By overbroad, he meant persons or things not intended to cover. He also identified under-inclusion as another form of imprecision and defined under-inclusion as where the rule is failing to include all the intended objects and individual.

The author identified twelve rules for drafting clearly to include: drafting in present tense and active voice, using singular subjects and avoiding long sentences, placing modifies side-by-side with modified text and avoiding combining legal concepts. Others include: using words consistently, choosing basic words and defining terms, witting formally, using appropriate punctuate and recognition of gender-neutral expression.

Rynearson is correct in this view in the sense that legislative sentences drafted in active voice easily identifies the principal actor, the person or entity that has a power, privilege, or duty as the subject of a sentence, logically followed by the mandate (i.e., verb and object) imposed. On the other hand, drafting in passive voice generally performs the opposite bringing chaos to the reader.

The author described vagueness unlike ambiguity which is characterized by two or more different clear meaning. Vague language has one meaning but that meaning is general and fussy that the boundary lines for its application are uncertain. He critiqued the idea that vagueness is a drafting mistake when he argued that there are situations where vagueness in a

statute is desirable. Where the parliament does not have the expertise or will to narrow the scope of application of a statutory provision. In this respect, parliament may intentionally draft the provision using vague language. This may be an invitation to the executive branch to issue a regulation to implement the provision. This, he demonstrated with an example: The [official] shall prescribe such regulations as may be necessary to carry out [a referenced provision]

He also observed that no matter how hard the dafter drafts clearly he or she may not outsmart statutory interpretation. He explained that whether or not a statue is clearly expressed depends in part, in the eyes and ears of the consumer, and the primary consumer of statute is the Judge or Administrator who is called upon to give it force. Therefore he advised that when drafting, it is important to take a moment to consider how a Judge or an Administrator might interpret the language been drafted and to channel that interpretation to the drafter's favour.

The author seemed to have produced a master headwind to plain language regime with his opinion of vagueness being intentionally used in legislative drafting. This view should not stand. Plain language advocates for clarity in drafting and may not encourage vagueness in any constitutional review provision or in any legal text. In this regard, it is important to stress that any constitutional review that is difficult to understand is injurious to the audience and it can lead to abdication of legislative powers.

Additionally, the author did not appear to have considered ordinary people as 'consumers' of legislation expect Judges and Administrators whose duties included (in his view) to interpret the law as if it would not amount to derogation of the rights of ordinary people to know what laws they are governed.

Regardless these controversies, the author presented a solid argument on what clarity is and rightly observed that ambiguity and imprecision are the two major obstacles to achieving clarity in drafting constitutional review provision.

Another scholarly work is that of Stijn Debaene, Raf van Kuyck and Bea Van Buggenhout[38] The authors' work focused on structure of legislations, its importance and in particular, in organizing and providing easily assessable legislative document.

The authors started by establishing that it's common knowledge that legislative technique rather concerns the form, shape and layout than the content of a bill. In this regard, they defined what legislative technique should be:

> Legislative technique is a practice that by the application of a set of rules leads to correct formulation and design of a pre-set norm content, resulting in a juridical-technical harmonization of the norm in itself and in relation with other norms. In their view, legislative technique should concentrate on four major components: design and structure of a bill; linguistic usage and style of a bill; composition and use of normative provisions.

On the structure of a bill they contended that laws are a consistent set of prescriptive, procedural, sanctioning and other provisions. Each of these types of provisions can be split up into different structural elements. The legislative structure should contain an exhaustive list of all provisions, their structural elements and the possible combinations of provisions and that, there should also be guidelines concerning the use of each kind of provisions.

In their further explanation, they argued that in addition to normative (substantive) provisions, laws also contain 'dependent provisions'. They emphasized that these provisions do not regulate human behaviour as normative provisions do, but determine the content and the effect of the normative provisions. While giving their examples to be definitions etc, they stressed that in this type of provisions the legislative structure should contain their structural elements with guidelines concerning their use. The author remarked that an important feature of legislative technique is that it only becomes operational when the content of the bill is already decided. Legislative structure does not concern the preparatory tasks in the drafting process.

[38]Stijn Debaene and others, 'Legislative Technique as Basis of a Legislative Drafting *System'* (2000) (9) (2) *Information & Communications Technology Law*; 149.

On the design and structure of a bill, the authors made it clear that:

> The rules concerning the design and structure of a bill are related to two aspects. Firstly they concern the general composition of the bill. From this point of view, a bill consists of a title, an introductory part (header), the main part or body of the bill and the final (subscribing) part (footer). Secondly, each of these parts is submitted to a further composition and layout. The title, for example, should contain the nature of the bill (statute, decree, regulation, etc.) and a short description of its content, again submitted to specific rules. The main part or body of the bill contains an exhaustive structure (field of application and new provisions) and an exhaustive division (part, book, title, chapter, section, article, paragraph, etc.)

As the meaning of legislative design and structure is universal, the author did not stress the importance of complying with in-house style in arranging design and structure of legislation, and he did not consider the relationship between drafting manual and in-house-drafting style. Apart of these observations, the authors reckoned the meaning of legislative technique and its relationship with structure of legislation.

The work of Bekink Bernard and Christo Botha[39] is also reviewed in this research. In their work titled 'Aspects of legislative drafting' they stressed on the importance of making legislation including constitutional review clear by the application of various drafting techniques. In furthering the discussion they identified common plain language principles that are necessary to achieve the techniques. They stated that:

> The need to make laws more accessible and easier to understand applies to all legislations and that gave rise to the plain language movement. In essence, plain language refers to legal communication that is clear, understandable, accessible, and also user-friendly. When constitutional review provisions are in plain language, communication is improved, information is shared more effectively, and all the stakeholders are better informed of what is expected of them.

[39]Bekink Bernard and Christo Botha, 'Aspects of legislative drafting: some South African realities (or plain language is not always plain sailing)' [2007] (28) (1) *Statute Law Review*; 34.

There is no other way to it. Plain language is the future unless societies want anarchy. An ambiguous constitution or constitutional review provision will create an ambiguous society. It is susceptible of throwing-up misunderstanding as to what part of the provision is to be obeyed and perhaps debates as to what is applicable to whom. This view is also shared by Stanley Edwards where is stated that:

> Any legal contract or statute should be written so that a person of reasonable intelligence, reading it in good faith, can understand it. But it should be written with such a degree of precision that a person of Machiavellian cleverness, reading it in bad faith, cannot misunderstand it.[40]

The authors continued: to ensure that legislations are drafted in plain language dedication; exceptional reading and writing skills and the application of various drafting techniques are required. In this wise, the authors contented that over the years the following common plain language principles have been identified: sentence construction and language where possible, sentences and paragraphs should be kept short: the general rule is that one theme, one paragraph, and one sentence should be used to explain one concept. Sentences should be in the active voice, and should be positive rather than negative or neutral. Clear and simple language must be used, with the emphasis on clarity, recognisability, intelligibility, accessibility, accuracy, and unambiguity. Unnecessary, difficult or overly technical words should be avoided where possible. The final product should be gender-neutral and the employment of cross-references should be minimized, or at least be simplified. To achieve certainty in a document, the use of mandatory words such as 'must' are preferred, and 'shall' or 'can' are to be avoided. Finally, unknown or foreign words or expressions should be used sparingly, and if possible, be excluded altogether. Sentences should be as short as possible and the first or second person should be used rather than the third person. Emphasis on the verb in a sentence is to be encouraged. These plain language guidelines should go a long way in making legislation more accessible and understandable.

In addition that plain language is fundamental to elegant drafting of constitution and its review provisions; this concept has become one of the innovations that guarantees gender equity and the disuse of legalese. To this view, it was reported that:

[40]Edwards Stanley E., 'Drafting Fiscal Legislation' [1984] (32) Canadian Tax Journal; 727.

> We apprehend that the mere extirpation of all such enactments as are obsolete and superfluous, the rejection of repetitions of terms of frequent occurrence, and the extrication of material words from the superfluity of language by which the law is often obscured, would greatly reduce the bulk and consequent costliness of the Statute Book, and would render it more accessible and intelligible to the generality of your Majesty's subjects.[41]

The lack of compliance to modern trend of plain language scheme such gender neutrality and clarity has hindered understanding of constitutions and their review provisions leading to endless reviews and it has also being identified as a gap in this research work. Thus, the call-out of these inadequacies has to resonate if the society desires to live in legal security.

The work of Means[42] in renumbering of amendments is equally reviewed in this research. In his book titled the 'Repeal and Amendment Provisions of Legislation' he stressed on renumbering as a device for clarity. He contended that:

> Where a paragraph, subsection or section is inserted or repealed, the subsequent paragraphs subsections or sections, as a rule should not be renumbered. This is because renumbering is likely to lead to misunderstanding, as far as cross-references are concerned. Thus, where a statute has been subject to frequent amendments, renumbering makes it more difficult to identify the content of a particular paragraph, subsection or section at a particular time. Specifically, where there are insertions, difficulty may be avoided by the use of distinguishing letters. For instance, a section inserted in a statute may be given the number of the section that it follows to which a capital A is added. The letters B, C etc. may be added to the same number if more than one section is to be inserted. For example, this can be illustrated as follows: New Parts of an Act inserted after Part II should be numbered IIA, IIB etc. Sections inserted between sections 1 and 2 should be numbered 1A, 1B and 1C etc. Subsections inserted between subsections 3 and 4 should be

[41]Royal Commission on the Consolidation of Statute Law, Report of the Commissioners Appointed to Inquire into the Consolidation of the Statute Law, HC (1835) 406, 5.
[42]N.L. Means, 'Repeal and Amendment Provisions of Legislation' and Human Rights; 191.

> numbered 3A, 3B and 3C etc. Paragraphs inserted between paragraphs (a) and (b) should be numbered (aa), (ab) and (ac) etc.

The view expressed by Mean is parallel with my idea. Renumbering of constitutional review provisions should not be confusing as to question which, for example is section 3 and section 3A. The renumbering is supposed to be section 3 then, section 3A becomes section 4. In this way, provisions of constitution appear elegant and easily identifiable. This view has received the acceptance of Freund Ernst. In his report to the American Bar Association, he stated that:

> In a great many cases it is possible to indicate in a precise and simple fashion what the draftsman is to do and what he is to avoid… this includes the numbering of sections, their length and sub-division and paragraphing, these helps in making laws unambiguous.[43]

It follows that clearness in drafting constitutional review can partly be achieved through positive renumbering of sections, subsections or paragraphs. It contributes to good laws. Numbers should be clear on the surface of the constitutional review document. It should also stand alone unmerged with alphabets. The idea of amalgamating numbers with alphabets is not good law. Good law is unambiguous without any bewilderment. This position is buttressed by Xanthaki Helen where she stated that:

> A good law is simply a law that is capable of achieving the regulatory reform that it was released to effectuate or support. A good law is one that is capable of leading to efficacy of regulation. There is nothing technical at this level of qualitative functionality: what counts is the ability of the law to achieve the reforms requested by the policy officers. And, in view of the myriad of parameters that are unique in each dossier, there are no precise elements of quality at this level. If anything, this qualitative definition of quality in legislation as synonymous to effectiveness respects and embraces

[43]Freund Ernst, 'Report of the Special Committee on Legislative Drafting' [1918] (4) (3) American Bar Association Journal; 426.

> the subjectivity and flexibility of both drafting rules and conventions and, ultimately, of phonetic legislative drafting.[44]

Means' work suggests numbering style that is easily distinguished from other provisions; nevertheless, this style appears to be chaotic. If renumbering aids clarity of provisions, they have to stand alone without alphabets.

In this literature review, the work of Rosalind Dixon[45] titled 'Constitutional Drafting and Distrust' is evaluated. He made comparison between the style of drafting an extensively worded constitution and a streamlined version and their implications on the role of the judiciary towards interpretation. However, the focus of this review will be limited only on the drafting styles he proposed. Rosalind Dixon stated that:

> Constitutions across the globe vary markedly in length and specificity. In drafting constitutions, constitution- makers thus face important choices of style, as well as substance: They can either choose to adopt either a highly "codified" or detailed approach to constitutional drafting, or rely on a more "framework"-style approach, which places greater trust in constitutional courts as partners in the process of constitutional interpretation….Yet there is a clear trend worldwide toward longer or more codified constitutions, and thus an important question for drafters as to the merits of the two drafting styles.

Although the author seemed to have focused on the style of drafting new constitutions, it should be made clear that in drafting constitutional review provisions, the drafting style adopted in the principal constitutions are usually adopted in drafting constitutional reviews; that is to say, a constitution originally written in framework drafting style cannot radically be reviewed using codified approach.

Therefore, this leads to a grand question: what is the implication of a constitution originally written in codified style of drafting with respect to the form of its review? The answer is not farfetched: owing to the lengthy nature of such constitution without diffusing their contents into other legislations, coupled with ever changing society, the outcome will be a constant

[44]Xanthaki Helen, *Misconceptions in legislative quality: an enlightened approach to the drafting of legislation." Conceptions and misconceptions of legislation,* (Cham: Springer International Publishing 2019) 23-49.

[45]Rosalind Dixon, *op cit*, 23.

constitutional review which carries alongside political maneuverings. These political maneuverings in some cases may result to what could be termed incremental constitutional review.

An incremental style of drafting constitutional review adopts a piecemeal approach to the review process by setting up separate committees[46] to draft items for consideration on different legislative bills instead of one bill. This view is expressed by Linington Greg when he seemingly discussed this practice in Zimbabwe, thus:

> The original Lancaster House Independence Constitution divided constitutional amendment procedure into two distinct categories. In terms of the first of these, Constitutional Bills effecting alterations to certain specified provisions…The specified provisions were themselves divided into two groups. [47]

Legislative drafting promotes consistency in reviewing extant constitutions. This means that a constitution drafted in framework approach will attract less amendment and perhaps less time for political maneuvering unlike the codified approach that is susceptible to incremental form of review.

In conclusion, views of many authors reviewed in this chapter have shed light on the content of drafting constitutional review provisions. By evaluating their works, it has raised the platform for understanding the differences between Nigeria and the United States of America in that regard. The major take away from their review is constant; they revolve around the importance of clarity in drafting constitutional reviews. It also affords opportunity to identify gaps in method of drafting constitutional review and the use of plain language.

[46] 'Nigeria's constitutional review: the continuing quest for a legitimate Grundnorm | Constitution' https://constitutionnet.org/news/nigerias-constitutional-review-continuing-quest-legitimate-grundnorm accessed 11/1/2022 1:52:46 PM

[47] Linington Greg, 'Alteration of the Constitution' [1997] 14.

CHAPTER FOUR

COMPARATIVE EVALUATION OF DRAFTING CONSTITUTIONAL REVIEW PROVISIONS IN NIGERIA AND THE UNITED STATES OF AMERICA

This chapter is focused on comparative assessment of drafting constitutional review provisions as practiced in Nigeria and the United States of America.

4.1. An Appraisal of Forms of Drafting Constitutional Review in Nigeria and the United States of America

In Nigeria, the legislative powers are vested in the National Assembly[1] which includes powers to alter any of the provisions of the Constitution.[2] In the same vein, in the United States of America, all legislative powers are vested on the Congress[3] which includes powers to propose constitutional review.[4] By these provisions, the powers to adopt guiding principle on the form of drafting constitutional review rest on both Parliaments.

Unlike methods of drafting constitutional review which can be found in drafting manual of the United States Senate and House of Representatives (Nigeria lacking in this wise), there is no recognisable documentation for this practice of drafting constitutional review in both jurisdictions leading to each jurisdiction adopting centuries and decade long practices that suits their peculiarities and circumstances. While Nigeria prefers incremental style of constitutional review, the United States of America on the contrary adopts non-incremental style which has advantageously served the country and can be adjudged to be more preferable.

To provide evidence to the use of incremental style of drafting constitutional review in Nigeria, the Seventh National Assembly had adopted proposals drafted in separate bills rather than a single Constitutional Amendment Bill. This drafting practice began in a bid to avoid the Seventh National Assembly's pit-hole experience were all items drafted on one bill paper were jettisoned while the President refused assent.

[1]Section 4 (1) CFRN 1999, Policy and Legal Advocacy Centre (PLAC) https://www.constituteproject.org accessed 27 December 2022
[2]ibid, Section 9 (1).
[3] The U.S. Constitution, https://www.constitutioncenter.org accessed 27 December 2022.
[4] ibid, Article V.

Therefore, taking a cue from its predecessors and wary of a potential presidential veto, the Eighth National Assembly (2015-2019) adopted a piecemeal approach to the review process by setting up two separate committees, one for the House of Representatives and another for the Senate, with the hope that multiple bills proposing different reviews would have more chance of being passed into law than a single bill.[5] This practice has endured even with the current Ninth National Assembly.

Additionally, constitution review exercise of the Eighth Assembly (2015-2019) contained differently unrelated items for review suggested that incremental form of constitutional review was used.[6] Some of the items for constitutional review included:

a. Distributable Pool Account: This proposal sought to make local governments financially independent of the States by abrogating the State Joint Local Government Account and empowering each Local Government Council to maintain its own Special Account.
b. Independent Candidature: This proposal aimed for independent candidacy in Presidential, Governorship, National Assembly and State Houses of Assembly elections.
c. Composition of Council of States: This sought to alter the Constitution to include former Senate Presidents and Speakers in the Council of State (a constitutionally created Federal Executive Body that advises the President on issues relating to national population, prerogative of mercy, award of national honours, INEC, National Population Commission and maintenance of public order).
d. Presidential Assent: This proposal sought to alter Constitutional provision on passing ordinary bills to close a loophole that fails to indicate what happens to a bill when the President fails to signify either his assent or veto to a bill.[7]

[5]Nigeria's constitutional review: the continuing quest for a legitimate Grundnorm | https://constitutionnet.org/news/nigerias-constitutional-review-continuing-quest-legitimate-grundnorm accessed 11/1/2022

[6] At the time of constitution alteration, the National Assembly in a bid to ensure good governance proposed different items for alteration. Many of the items were unrelated but they were part of the Constitution.

[7] Factsheet: 'Outcome of the Constitution Review Process in the 8th National Assembly' *Review of relevant information on Nigeria's democracy, Policy and Legal Advocacy Centre (PLAC),* July, 2019.

Similarly, the Nigerian Ninth National Assembly proposed 68 items for constitutional review. These constitutional review proposals are from virtually all chapters of the constitution and drafted in different bills. Some of them include:

a. Constitution Alteration Bill: It is to provide for the procedure for passing a Constitution Alteration Bill where the President withholds Assent.
b. Placing VAT on Exclusive List: The proposed amendment seeks to include Value Added Tax (VAT) on the Exclusive Legislative List. It will make the collection of VAT an exclusive reserve of the Federal Government.
c. Timeline for Civil and Criminal Cases: This seeks to set timelines within which Civil and Criminal Cases are heard and determined at Trial and Appellate Courts in order to eliminate unnecessary delay in justice administration
d. Removal Legislative Presiding Officers: The amendment seeks to provide for the procedure of removing the President of the Senate, Speakers of the House of Representatives and State Houses of Assembly.[8]

Juxtaposing this practice in Nigeria is the non-incremental style used in the United States of America where joint proposal for constitutional review is drafted in one proposal document. The style also promotes closely related issues or sometimes a single issue for constitutional review rather than multiple items at a time. For example, delegates led by James Madison set to work on drafting a list of checks on federal power that would ensure the full exercise of individual liberty[9]drafted the Bill of Rights which consisted of several items but on closely related issue.

Following from this evidence, it can be argued that drafting constitutional review by way of incremental style resonates perplexity and insobriety. This apparently is as a result of multiple items in numerous constitutional review bills; that clearly have the tendency of disenabling readers to make sense of the general content of the bill.

In this regard, if easiness and understanding in reading of constitutional review provisions are of the essence, then the Nigerian drafting style of incremental constitutional review is against this basic principle. On the contrary, non-incremental drafting style in the United States of

[8]James Kwen, '1999 Constitution: Here are 68 proposed amendments to know *'Business Day* (Lagos, February 27 2022)<https://businessday.ng/news/article/1999..> accessed 16 February 2023-03-30.
[9]Ashutosh Bhagwat,'The Democratic First Amendment' [2015] (110) *North Western University Law Review;*1097.

America enables readers of constitutional review proposal to understand the proposals easily since items for consideration are on one document.

To comprehend these styles of drafting constitutional review requires the understanding of the nature of constitutions of both countries. There is likelihood that codified constitutions may attract frequent review. Thus, when constitutions are constantly reviewed, it may create opportunity for all interests to make contributions thereby allowing for strategic solutions to having all constitutional bills assented to. These narratives are peculiar to Nigeria where the over worded constitution provides opportunity for successively incremental constitution tweaking. On the contrary, the Constitution of the United States of America is less worded therefore no strategic solutions is required as there is no need to circumvent presidential assent if there was the requirement.

Another sort of incremental style of constitutional review is the consideration of many items in one constitutional review regime. This practice is seemingly encouraged by the absence of state constitutions in Nigeria. Section 9(2) of the Constitution[10] is clear on states government roles toward the review of the federal Constitution. Components states of Nigeria participate only in the process of amending the federal constitution and are not allowed having individual constitutions. This has intensified the barrage of incremental constitutional review in Nigeria.

Comparatively, in the United State of America, States Constitutions vent pressure for national constitutional reform, and thus can guide the timing, nature, and scope of American constitutional and political development. This it does by guiding national constitutional realignments. States do not always lag behind national realignments, but sometimes lead them. Since states in the United States of America contribute to minimize chances for potential constitutional review, it can be argued that review to federal Constitution can be achieved by non-incremental form of constitutional review.

The reasons of this drafting style in both jurisdictions are worth highlighting. The presence of the military in the Nigerian constitutional review history derailed some gains Nigeria would have made as some items could have long been amended easing off recent incremental review in Nigeria. Again, the ostensibly less autochthonous constitution handed over by the

[10] The section provides that the Nigerian constitution will be amendment ….by resolution of the Houses of Assembly of not less than two-thirds of all States"

military encourages outright denial of popular vote to constitutional review as it provides in its surreal preamble, 'We the people of the Federal Republic of Nigeria'[11] buttressing reasons for the deluge of incremental review.

On the Contrary, the Constitution of the United States of America provides for referendum for citizens to ratify or reject constitution.[12] It also envisages 'a union of people' hence the preamble: *'*we the people of the United States, in Order to form a more perfect Union'.When the people are invoked in a constitution making and review, there is an assumption of a commonality of purpose and destination. What holds people together is not the thread of a constitution, but certain beliefs common to most members of a society. As Hayek[13] puts it,

> We must not believe that, because we have learnt to make laws deliberately, all laws must be deliberately made by some human agency. Rather, a group of men can form a society capable of making laws because they already share common beliefs which make discussion and persuasion possible and to which the articulated rules must conform in order to be accepted as legitimate.

Unlike Nigeria, the Constitution of the United Statesof America is a product of design because people deliberately constructed the kind of government under which they wished to live- with right to ratify or reject the said constitution. Where the people genuinely adopt a constitution, it follows that the palpability of subscribing to a frequently incremental review may not be a viable option; instead, there is more likelihood for a non-incremental reviewregime.

4.2. An Assessment of Different Methods of Drafting Constitutional Review in Nigeria and the United States of America

Method of drafting constitution review is a process of putting down into writing the instructions and objectives of elected parliamentarians toward constitutional review scheme.

[11] The Preamble of the Nigerian Constitution provided that: *'We the people of the Federal Republic of Nigeria' but the reality is Nigerians are not the real makers of the Constitution; it was handed over by the Military.*
[12] Ellis P O, 'Law-Making by Popular Vote; Or, the American Referendum' [1891] (2)*The Annals of the American Academy of Political and Social Science*; 1.
[13]Friedrich Hayek, *The Constitution of Liberty* (University of Chicago Press, 1960) 183.

The operative word in this wise is *process;* process simply means a way of doing something. A process must not necessarily have an unpleasant effect, what is important is its general acceptability.

In Nigeria and the United States of America, methods of drafting constitutional review provisions are quite different albeit aiming at the same goal. While constitutional review in Nigeria is by direct or textual method where words are either inserted into, or deleted from, or both inserted into and deleted from an original provision,[14] in the United States of America, constitution is reviewed by indirect or non-textual method where substance of the change proposed to be made is enacted in the amending constitution without altering the text of the constitution being amended.

The constitutional amendment methods in both jurisdictions are age-long and have presumably served both countries quite well making it difficult to be prejudicial to any of the two. While both methods have received commendation from different prominent legislative drafters, they have also received fair share of criticisms thereby resonating a valid debate as to the possibility of a third method - the mixture of the two; a concept that has generated interest for exploration.

Form the available data, Nigeria has consistently amended her constitution through direct method; this it has demonstrated in the 2022 Constitutional alteration regime (currently ongoing) as shown below:

(HB. 1365)

A BILL

FOR

AN ACT TO ALTER THE PROVISION OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 TO EXPAND THE DEIVERSITY AND INCLUSION, PROVISION IN THE CONSTITITION AND FOR RELATED MATTERS

Sponsor: Hon. Lynda Chuba Ikpeazu. Hon. Femi Gbajabiamila

Co-sponsors:

[14]Ian McLeod, *Principles of Legislative and Regulatory Drafting* (Hart Publishing, 2009).

Hon. Nkeiruka Onyejeocha Hon. Ibrahim Khadija Bukar Abba

( )

ENACTED by the National Assembly of the Federal Republic of Nigeria.

Amendment of the Constitution of the Federal Republic of Nigerian

Alteration of Section 14 of the Principal Act

1. The Constitution of the Federal Republic of Nigeria, 1999 (in this bill referred to as "the Principal Act") is altered as set out in this Bill.

2. Section 14 of the Principal Act is altered as follows:

(a) In subsection (3), by substituting the existing subsection (3) with a new subsection "(3)"

"(3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect gender diversity, the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic, linguistic or religious group or persons of one gender in that government or in any of its agencies".[15]

This is also demonstrated by the provision of s110 (a) of 1999 Constitution of the Federal Republic of Nigeria, (First Alteration Act) 2010] which inserted the heighted phrase into the provision.

'A member of the House of Assembly may be recalled as such a member if -

(a) there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member **and which signatures are duly verified by the Independent National Electoral Commission;** and[16]

[15] National Assembly Journal, Abuja, C 1033, HB. 1365, (2021) (18) *National Assembly press*, 13.

[16]CFRN 1999, Policy and Legal Advocacy Centre (PLAC) https://www.constituteproject.org accessed 27 December 2022

On the flip side, drafters of the Constitution of the United States of America have maintained indirect method of drafting constitutional review in the country. This is confirmed by the review of art. III s2 by the XI Amendment as shown below:

Article III s. 2

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - **[between a State and Citizens of another State;-]*** between Citizens of different States,- between Citizens of the same State claiming Lands under Grants of different States, **[and between a State, or the Citizens thereof;- and foreign States, Citizens or Subjects.]*** In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed".[17]

Amendment XI, Passed by Congress March 4, 1794 Ratified February 7, 1795 *(Note: A portion of Article III, Section 2 of the Constitution was modified by the 11th Amendment.)*

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State".[18]

[17]U.S. Constitution, *op cit*, 3.
[18] ibid.

Data presented for constitutional review in Nigeria shows how easy provisions could be drafted; the clauses or paragraphs can be inserted or substituted directly from the body of the bill as demonstrated on the highlighted part of the draft. Additionally, direct amendment is simpler and easier to comprehend posing a comparative edge over the non-textual method practiced in the United States of America. For example, one only needs to focus on the amended draft without necessarily worrying on what was removed from it. However, the same is not the case for the United States of America owing to its referential style which requires extra efforts for its comprehension. In other words, one may need to flip pages back and forth, many times before there can be any meaningful understanding of the reviewed constitution.

Consequently, direct amendment as can be seen on the draft seems to be encouraging a review of the law on that particular subject as a whole rather than as a series of interwoven but separate parts of the constitution. This it has effortlessly achieved by encouraging the integration of modified provisions with the old ones. Thus, if constitutional review continues in this direction, it will reduce proliferation of constitutional provisions on one constitution document. But indirect method is offhand in reducing proliferations. Imagine where Art. XI of the Constitution of the United States of America was reviewed for a second time or more, it could warrant three or more provisions on one subject in the same constitution document.

William Graham-Harrison in describing the perplexing and disordered style of this method of amendment expressed thus, 'the effect is a cumulative one as statute is piled on statute making comprehension progressively more difficult. Often Act is heaped upon Act until the result is chaotic and almost unintelligible'.[19]

From the United States of America stand point, in an environment where the legislative time of the essence, the indirect method of constitutional review seems more appreciated than the direct method practiced in Nigeria since parliamentarians need to fairly and quickly grasp the purpose of review they are being asked to enact and the changes proposed in them which requires their consent. Another advantage of non-textual method is that alterations to any clause can be proposed while it is passing through Parliament in a straight-forward manner without tampering with the already submitted amendment proposal. On the preservative

[19]An Examination of the Main Criticisms of the Statute Book and of the Possibility of Improvement (*J Soc'y Pub.Tchrs, L*., 1935) 9.

nature of this style of review, Baber James Julius informed that, 'the Constitution is not amended in the way of editing. Instead, the new amendments are tacked onto the end of the document, and even if they overrule a previous part, that part is left in.'[20]

On the contrary, in Nigeria, non-textual method of constitutional review is not feasible because constitutional review must be made on the body of the provision; this would require the parliaments to wait until such amendment is made on the body of the amending provision before continuing with parliamentary proceeding.

Without doubts, both direct and indirect methods of drafting constitutional review provisions possess there advantages and disadvantages which Nigeria and the United States of America have acclimatised. Thus, in one sense, direct method of constitutional review may be considered to have a slight edge over the indirect method, but what about a possible uncharted method that could navigate the shortfall of two harbingers?

4.3. An Assessment of Use of Legislative Structure in Drafting Constitutional Review Provisions in Nigeria and the United States of America

By the provisions of s4 of Nigerian Constitution and Art I of the Constitution of the United States of America, both Parliaments are empowered to make rules for legislative processes. However, in the United States of America, unlike Nigeria, there is a further node to these provisions with an elaborated format in the United States of America Senate and House of Representatives providing for Legislative Counsel's Manual for Drafting Style.[21] Nigeria on her part adopted the British model for drafting but has maintained originality with her home initiative. These manual provide for the structure format for drafting and guidance to the drafter.

Clearly, no jurisdiction has the best legislative structure for drafting constitutional review provisions, what is essential for the structure format is to aid audience decipher the content of the reviewed constitution. As rightly put by Bakshi 'there is no uniformity in the structure and arrangements of various parts of a statute followed by various countries'.[22]

[20]'An Analysis of Different Constitutional Amendment Models' (Law School Student Scholarship 2014) 435. referring to the Constitution of the United States; Amendment 18 and Amendment 21

[21] The manual is a guild for legislative drafters. In this dissertation, the 1995 edition prepared by Ira B. Forstater for the Office of the Legislative Counsel U.S. House of Representative is used.

[22]PM Bakshi, *An introduction to legislative drafting, Bombay*: (NM Tripathi, 1927) 7.

Ordinarily, legislative structure includes the preliminary, principal, miscellaneous, and final provisions. But for constitutional review, all the provisions may not be included as part of the structure format. Nonetheless, structure for drafting constitutional review must possess at least preliminary or principal provisions.

In Nigeria, preliminary provisions for constitutional review must have a long title, enactment formulae, and space for commencement date, marginal note, short title and explanatory memorandum and in its principal provision a well numbered and paragraphed draft. These legislative structures as can be seen below:

[HB. 1364]

A BILL

FOR

AN ACT TO ALTER THE PROVISION OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 TO EMPOWER THE NATIONAL ASSEMBLY AND STATE HOUSES OF ASSEMBLY TO MAKE LAWS TO REDRESS SOCIAL, ECONOMIC, EDUCATIONAL OR OTHER IMBALANCES IN THE SOCIETY AND FOR RELATED MATTERS

Sponsor: Hon. Lynda Chuba Ikpeazu. Hon. Femi Gbajabiamila

Co-sponsors:

Hon. Onuh Onyeche Blessing Hon. Beni Lar

( )

ENACTED by the National Assembly of the Federal Republic of Nigeria.

Alteration of the Constitution of the Federal Republic of Nigerian

1. The Constitution of the Federal Republic of Nigeria, 1999 (in this bill referred to as "the Principal Act") is altered as set out in this Bill.

Alteration of Section 42 of the Principal Act

2. Section 42 of the Principal Act is altered by inserting immediately after subsection (3), new subsections "(4)"

"(4)" Nothing in this section shall prevent the National Assembly or House of Assembly of a state from enacting laws for

(a) implementing policies and programmes redressing social, economic, education or other imbalance in society; or

(b) making such provision as is required or authorised to be made

10 under this Constitution; or provide for any matter acceptable and

11 demonstrably justified in a free and democratic society.

This Bill is cited as the Constitution of the Federal Republic of Nigeria 1999 (Alteration) Bill, 2022

EXPLANATORY MEMORANDUM

This Bill seeks to alter section 42 to redress social, economic, educational or other imbalances in the society.[23]

However, in the United States of America, a proposal for constitutional review may have in its preliminary provisions a long title, preamble, enactment formulae, short title etc. And in its principal provision, a well numbered and paragraphed provisions. These provisions for both jurisdictions are comparatively evaluated below:

I. Preliminary Provisions

a. Long Title

In both Nigeria and the United State, long title is a regular feature of a constitution review draft. Long title precedes the enacting clause and summarises the subject matter of the proposed constitutional review.

From the data presented, the long title in Nigeria reads: A BILL FOR AN ACT TO ALTER THE PROVISION OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999...AND FOR RELATED MATTERS. In the United States of America, along title for constitutional amendment will read: "Proposing an amendment to the constitution of the United States concerning...and for other purposes."[24]

There is a clear difference in this regard: in Nigeria, the long title is written in upper case (however, sentence case is allowed) while in the United State of America, it in sentence case. However, there is an area of convergence; both jurisdictions allow long titles to cover related matters. In Nigeria, 'and for related matters' is commonly expressed and in the United States of America, 'and for other purposes'. This means that both countries envisage closely related matters as part of provisions of the reviewed constitution even though not expressly mentioned. The difference is a matter of style and nothing more.

[23] National Assembly Journal, Abuja, C 1031, HB. 1364 (2021) (18) *National Assembly press*,13.
[24] Ira B. Forstater*, House legislative Counsel's Manual on Drafting style: Prepared by The Office of the Legislative Counsel U.S. House of Representative,* (U.S. Government Printing Office, Washington: 1995) 25.

Again, it is no surprise that both jurisdictions deem it necessary for long titles giving the eminent role they play to the entire constitutions. In the Nigerian case of *Bello &13 others v Attorney-General of Oyo State*,[25] the supreme court held that: 'resort may be had to a long title of an enactment only as an aid to resolve ambiguities that may arise from the plain and ordinary words of a Statute'.

b. Short Title

Both jurisdictions use short title in drafting constitutional review provisions. Short title aids referencing of the constitution and it generally reflects the subject matter of the proposed[26] constitutional review. For example: in the United States of America, the short title of the First Constitution Amendment reads: 'Bill of Rights, Amendment I' and in Nigeria, an example of short title for constitutional review reads: 'Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010' There is no major difference in drafting short title in both countries, just as in long title, it is a matter of style.

Conversely, there are two major differences in Nigeria and United States of America in drafting preliminary provisions for constitutional review. They are the use of preamble and marginal notes. While in United States of America there is the use of preamble, in Nigeria, preamble is not used. Also in Nigeria, there is the use of marginal notes but not in the United States of America.

c. Preamble

Preamble serves a similar purpose as long title[27] but it is used in drafting constitutional review in the United States of America. It is considered as part of the constitution and can help in the construction of the constitution just like long title. The Preamble to Bill of Rights of the United States reads thus:

> 'Congress of the United States begun and held at the City of New-York, on Wednesday the fourth of March, one thousand seven hundred and eighty nine

[25][1986] 5 NWLR (pt.45)828.
[26]Council of the District of Columbia Legislative Drafting Manual, Prepared by The Office of the General Counsel, edn. 2019.
[27]D T Adem, Understanding Bill, (Lexisnexis, 2014) 102.

> THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.
>
> RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.
>
> ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.'

Notwithstanding the controversies surrounding the use preamble, it has been recommended for use if it will serve a useful purpose in a particular circumstance such as where the subject matter of the legislation is of a constitutional or international importance; and in this circumstance, the Bill of Rights ticked the box. In Nigeria however, preamble has never been used in constitutional review though it was used in the drafting of 1999 Constitution and can been found at the beginning part thereof.

The disregard of preamble in the constitutional review scheme in Nigeria is preferable and should be the way forward; this is because constitutional review should not be treated as constitutional change. Where new constitution is drafted there should a new preamble to set the background but not for constitutional review. For constitutional review, the spirit and background of the constitution itself should live with any review the constitution is meant to create.

d. Marginal Note

Another area of divergence in drafting preliminary provision is in the use of marginal notes. Marginal notes are integral part of preliminary provisions. The major relevance of marginal notes is its ability to provide at a glance the content of a section without reading the entire section. To this, Lord Thring, expressed thus:

> Marginal notes demand an intimate knowledge of the subject matter and should receive more attention than is usually given to them. A marginal note should express in a concise form the main object of the section to which it relates.[28]

As can be seen on the data presented Nigeria can arguably be adjudged as an adherent to Lord Thring's view in this regard. However, marginal notes are not part of the consideration for constitutional review draft in the United States of America. This could possibly be attributed to the brevity and unambiguousness of the constitution.

Regardless the positives of brevity and unambiguousness of the Constitution of the United States of America, there may be yet some percentage of audience that may not have the luxury of time to read the entire contents of an Article and if the function of marginal note is to make as graspable as possible the content of constitution, it follows that marginal note should lead the initiative, at least for the interest of the small minority who may not comprehend constitutional review provisions on the surface of it. To this end, it can be argued against the United States of America that the aim of marginal note to constitutional review is completely defeated.

II. Principal Provisions

Principal provisions constitute the main body of constitutional review draft. In this sub-topic, the use of numbering and paragraphing in drafting constitutional review in Nigeria and the United States of America are comparatively evaluated.

[28] Henry Thring Baron, *Practical legislation: The composition and language of acts of Parliament and business documents* (J. Murray1902)50.

a. Numbering

An area of divergence for drafting constitutional review provisions in Nigeria and the United States of America is in numbering though both jurisdictions depend largely on it to achieve clarity.

Notably, during the period the constitutional review drafts are within the parliamentary circle of both jurisdictions, each line of the bill are numbered and drafters are required to use page and line numberings whenever possible in making amendment to bill,(rather than attempting to identify by citation or word reference or by other means).[29] Additionally, in both jurisdictions, each subheading in the constitutional review provision are numbered and are termed clause; for instance "clause 1" and where there is sub-sub heading it is termed "clause 1, sub-clause 1".

However, when the review becomes part of the constitution there is divergence. In Nigeria, the subheadings are numbered and are termed "sections" and for sub-sub headings they are termed "sub-sections" both are numbered in Arabic numerals. This will appear thus: Section1 (1) There could be a possibility for paragraphs, identified with bracketed small case English alphabets and sub-paragraphs identified with bracketed small case Roman numerals, for instance, (a) and (i) respectively. Thus, all the processes are indented.

In the United States of America, there is the use of 'Articles', 'Art.' for short which are numbered in upper case Roman numerals and sub-articles are called sections numbered in Arabic numerals for instance Art. 1**§.**1

Again, both jurisdictions do not renumber sections, subsections, paragraphs, or subparagraphs, sub-subparagraphs, or sub-sub-subparagraphs because renumbering makes statutory research difficult and gives the reader no clue that changes have been made.[30] Instead, in the United States of America, giving the nature of indirect method of constitutional review, reviewed provisions are numbered seriatim following the order in which the reviews come.

[29] Ira B. Forstater, *op cit*, 24, 45.
[30]Council of the District of Columbia Legislative Drafting, *op cit*, 26.

In Nigeria however, deleted provisions are mentioned 'deleted' as is the case in s137 (1) (i) of 1999 Constitution (First Alteration Act) 2010[31] indicating that the section is deleted. Substituted sections are not numbered while inserted sections are numbered differently with addition of English letter alphabets after the number of sections, subsections and paragraphs to indicate that there is a review to the provision. This is demonstrated in s135 (2A) of 1999 Constitution (First Alteration Act) 2010[32]

Comparatively, the numbering style in the United States of America is well suited giving the indirect method of constitutional review. This is because new provisions to the constitution are placed behind the entire constitution and are numbered accordingly.

However, in Nigeria the style of numbering of constitutional review provisions is maladroit and bewildering. The style creates two sections or subsection or paragraphs with an alphabet to distinguish the reviewed provisions from the rest of the provisions. It may be argued that the alphabet informs the audience that there is a new provision but the numbering style would have appeared more elegant if new provisions are renumbered (in the instance case as s135 (3) and in that order) until the last subsection.

> **135. Tenure of office of President**
> (1) Subject to the provisions of this Constitution, a person shall hold the office of President until-
> (a) when his successor in office takes the oath of that office;
> (2) Subject to the provisions of subsection (1) of this section, the President shall vacate his office at the expiration of a period of four years commencing from the date, when –
> (a) in the case of a person first elected as President under this Constitution, he took the Oath of Allegiance and the oath of office;
>
> (2A) In the determination of the four year term, where a re-run election has taken place and the person earlier sworn in wins the re-run election, the time

[31] *CFRN 1999,op cit*, 16.
[32] ibid.

spent in the office before the date the election was annulled, shall be taken into account.[33]

This current (ss2A) of the Nigerian Constitution brings confusion but for the purpose of clarity the sub-section should have been numbered as sub-section 3.

Ultimately, giving the style of drafting constitutional review provision in the United States of America, the numbering of the provisions is more elegant and lucid than the style adopted in Nigeria.

b. Paragraphing

Paragraphing is a fundamental attribute of drafting constitutional review provision. The device helps readability of sentences and to avoid ambiguity. It also ensures precision and therefore aids in understanding of legislative sentences.[34] However, this important device appears to be a divergence in constitution review in Nigeria and the United States of America. While in Nigeria as presented in the data, paragraphing is a recurrent attribute of constitutional review scheme but in the United State of America, the devise is omitted or to put mildly, they are written in prose-like format.

The use of this sub-structure in Nigeria may have been inspired by the argument that an arrangement of sentences in paragraphs for more graphic presentation of enactments can materially increase clearness. They can enable the reader to distinguish more readily between the main and the dependent clauses - and to perceive the relationship between the elements of the provision.

Conversely, in the United State of America, it is observed that paragraphing has not been part the sub-structure for constitutional review. Once again, this is understandable giving the brevity[35] and lucidity of the constitution allowing articles and sections to be the only sub-structure in this respect; after all, paragraphing may not be required in certain circumstances. In this wise, Crabbe expressed that:

[33] CFRN 1999, *op cit*, 16.
[34] V. C. R. A. C Crabbe, *Legislative Drafting* (Cavendish Publishing Limited, 1993)124.
[35] Woodward-Burns, Robinson, *Hidden Laws: How States Constitution Stabilize American Politics* (Yale University Press, 2021) 8.

> Merely separating the elements of the sentence by paragraphing can be the source of much bad composition. Paragraphing should be used to make a matter more readable, not more voluminous in content.... There is danger in the use of the technique of paragraphing. It may become merely a tool to extend a simple legislative sentence into a very long and complicated one. It may enable an ingenious Counsel to combine a number of distinct sentences under the impression that paragraphing will make the meaning clear to the reader. The technique can be abused. The need for care in using the technique cannot be over emphasized.[36]

Paragraphing is as essential substructure as it is optional in legislative drafting. If constitutional review provisions can be understood clearly without paragraphing, then, drafters of those provisions deserve commendation and this is true for constitutional review provisions of the United States of America. This does not relegate the consensus use of paragraphing as is the case of Nigeria where they help in itemization and projection of clarity.

Legislative structure helps constitutional audience make sense of the content of reviewed constitution. It is inconsequential the format they take, what is material is clear communication and comprehension for citizens of the jurisdiction. In effect, there is no all-purpose arrangement that is most suitable for[37] Nigeria and United States of America. What may be the best arrangement for Nigeria may not be the best for the United States of America. The focal point remains readability and comprehensibility.

4.4. An Assessment of Use of Plain Language in Drafting Constitutional Review Provisions in Nigeria and the United States of America

Plain language is a language that is clear, direct and straight forward. It is also language that allows the reader concentrate on the message conveyed and not the difficulty of the language used. The aim of plain language is the same: to simplify all official writing by removing unnecessary obscurity and complexity.

[36]Crabbe, *op cit*, 33, 127-128.
[37]Reed Dickerson, *Materials on Legal Drafting, St. Paul, Minnesota* (West Publication Co., 1981) 75.

Obviously, one aspect preventing full understanding of legal text is the inclusion of technical terms and expressions that may often be either archaic or rarely used or foreign, or which may be commonly used in everyday discourse but has an unusual meaning in the legal context. Others may include the unnecessary use of long, complex sentences, with intricate patterns of coordination and subordination, the tendency towards nominalization,[38] gender bias, among myriad of things, in which case, an average citizen would probably be left in perplexity.

Situations where courts are frequently visited for interpretation of parts of a constitution not for purposes of general settlement of disputes but for interpretation of meanings of words or sentences used in the constitution would signals a red flag from plain language. Furthermore, where reasonable citizens cannot at one reading make scene of content of a constitution also would signals that the use of plain language may have been circumvented.

In Nigeria and the United States of America, the principle of plain language has taken foothold since the 1966 directive of the then Cabinet Office in Lagos, that: Drafting instructions should set out the requirement in plain language[39] and since the 1963 publication of Mellinkoff's *The Language and the Law* that highlighted the defects of legal language[40] in the United States of America.

But there remain a grand question; have the two jurisdictions conformed to this principle in drafting constitutional alteration? While on one hand it could be argued that the principle has made progress signalling conformity to the legislative principle, on the other hand, the possible progress has been best described as underachieving.

a. Recorded Progress

In the United States of America, the first 10 amendments to the constitution were ratified on December 15, 1791. Notwithstanding the age of the review, the constitution seems to have relatively conformed to the principle of plain language prompting Kimble to cite the National

[38]Christopher Williams, 'Legal English and plain language: An Introduction' [2004)] (1) (1), *ESP Across Cultures;* 111.
[39]Chinedu Anita Ikpeazu, *Benchmark for Legislative Drafting* (Been A Lecture Handout/ Note on Legislative Process and Drafting, NILDS, First Semester 2020/2021 Session) PowerPoint, Slide 5.
[40]Mellinkoff David, *The Language and the Law*, (Wipf and Stock Publishers2004)116.

Conferences of Commissioner on Uniform States Law which expresses that: 'the essential of good drafting are accuracy and brevity, clarity and simplicity'.[41]

The reviewed provisions are brief, plain and filled with commonly used words that even non-lawyers could make sense of the amendment in one reading. For example, the first amendment provides thus:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.[42]

The third amendment followed in such the same pattern:

> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.[43]

Nigeria has equally demonstrated fair compliance to the use of plain language in drafting constitutional review provisions. Some of the reviews are drafted in positive and in active voice with well-arranged paragraph to aid comprehension. In a bid to review the provisions of section 9 of 1999 Constitution of Nigeria in 2013 the following well paragraphed and punctuated bill clearly conformed to the plain language principal:

"Section 9 of the Principal Act is amended by inserting new subsections "(3A)" – (3N)" –

"(3A) For the purpose of altering the provisions of this Constitution, the assent of the President shall not be required.

(3B) The National Assembly may propose a new Constitution for the Federation.

(3C) A new Constitution shall come into effect in the manner stipulated under subsections

(3D) – (3N) of this section –

(3D) There shall be a committee of the Senate and House of Representative to be known as the Joint Constitution Drafting Committee.

(3E) The Joint Constitution Drafting Committee shall consist of –

(a) two members from each State of the Federation one from the Senate and the other

[41]Kimble Joseph, 'Plain English: A Charter for Clear Writing' [1992] (9) (1) *TM Cooley L. Rev*; 19.
[42] The First Amendment to the U.S. Constitution, https://www.constitutioncenter.org accessed 27 December 2022.
[43]ibid, The Third Amendment.

from the House of Representatives; and

(b) two members representing the Federal Capital Territory, one from the Senate and the other from the House of Representatives.[44]

Another example demonstrating the use of plain language drafting could be found in s137 (3) of 1999 Constitution (Fourth Alteration No.16) Act 2017.[45]The provision started in active voice 'A person who was sworn-in as President'. It also complied with George Coode's rule of legislative sentence in legal subject, legal action, case and condition. The section provides thus:

(3) A person who was sworn-in as President to complete the term for which another person was elected as President shall not be elected to such office for more than a single term.

b. Underachievement

On the contrary, Nigeria and the United States of America have not secured enough benchmark in principles of plain language as regard drafting constitutional review provisions paving way for courts to assume informal legislative functions contrary to the principal of separation of powers.

In the United State of America, courts have had hard times trying to sort the problem of constitutional inconsistency with the meaning of "property" in the provision of XIV Amendment. The XIV Amendment, Section1 provides that: "All persons born or naturalized in the United States of America and subject to the jurisdiction **thereof,** are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or **property**, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

The challenge with interpretation of the word "property" arose because of its use in V Amendment which erratically occasioned different and inconsistent meanings to the word. This sort of perplexity is also found in s18 (3) of the Nigerian Constitution with the use of the

[44] Extract from A BILL FOR AN ACT TO FURTHER ALTER THE PROVISIONS OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AND FOR OTHER MATTERS CONNECTED THEREWITH, 2013https://www.premiumtimesng.com/wp-content/files/... ·

[45]*CFRN 1999,op cit*, 16.

word ‘practicable’ considered to be a litigation word to determine when government can give free education. Having failed to maintain consistency in XIV Amendment, Tom W. Bell stated that:

> As a corollary, it should also trouble us that the definition of “property” varies from spot to spot in the Constitution. If ordinary meaning serves as our lodestar, after all, we would expect it to stay north no matter where we travel in the document.[46]

And on the disparaging impact of not drafting plainly, Lord Radcliffc said of legal language that:

> A sort of hieratic language has developed by which the priests incant the commandments, I seem to see the ordinary citizens today standing before the law like the laity in a medieval church: at the far end the light glow, the priestly figures move to and from, but it is in an unknown tongue that the great mysteries of right and wrong are proclaimed.[47]

Nigeria is equally blemished in this adverse use of plain language. From the controversies surrounding the right of the President to assent to constitutional amendment bills which has been settled by the Federal High Court in the case of *Olisa Agbakoba v National Assembly and another*[48] to the fundamental objective and directive principles of state policy of the Nigerian Constitution which until recently have started receiving radical judicial interpretations, Nigeria seems to be fairly unparalleled with the United States of America in this respect.

The challenges associated with noncompliance with plain language are enormous whether in Nigeria or the United States of America; from the possibility of having multiple interpretations of the constitutional provisions to the inability of legislative audience to comprehend the contents of the constitution. For example, a document may be legally clear even if it is linguistically complicated and requires time and effort to read. Therefore, to say

[46] Tom W. Bell, “Property" in the Constitution: The View from the Third Amendment’ [2012] (1243) *William & Mary Bill of Rights Journal;* 20.
[47] Quoted in Law Reform Commission of Victoria (Report No.9) “Plain English and the Law”63.
[48] (Unreported Suit No.: FHC/L/CS/941/2010 of 8 November 2010). The Court ruled that the Nigerian President has the right to assent to constitutional alteration.

that a text is difficult is not to say that it is ambiguous or contradictory.[49] The challenge can also result to visitation to courts, in which case, frequent recourse to courts would produce an increased volume of case law, which is usually even less accessible than statutes to the layperson leading to a higher degree of dependence of the law (and of citizens) on courts.[50]

Consequently, plain language has become a strong legislative tool for closing gender gap in drafting; unfortunately, Nigeria is seemingly not taking full advantage of the principle while drafting constitutional review provisions.

Notably, s26 (2) (a) provides one of the tragedies to the use of the principle of plain language in the constitution of Nigeria when it adopted a gender bias noun "woman" instead of "person". The provisions read thus:

Current Provision of 26 (2) (a)	Proposed Amending Provision
2) the provisions of this section shall apply to- (a) any **woman** who is or has been married to a citizen of Nigeria; or (b) every person of full age and capacity.	Clause 3 Alteration of section 26 Section 26 (2) (a) is altered by substituting for the word **"woman**", the word **"person**".

Notwithstanding efforts to alter this provision in 2013 and 2022 constitutional review scheme, the constitution has remained resolute in distorting gender neutrality principle of plain language.

The use of gender non-neutral words is not only peculiar to Nigeria. In the United States of America, some review provisions are drafted with gender bias. For example, in XX Amendment s3, the drafters did not envisage that a women may be President of the United States of America when it used the possessive pronoun 'his' to refer to the President. The section provide as follows:

[49] Assy Rabeea. 'Can the law speak directly to its subjects? The limitation of plain language' [2011] 38.3 *Journal of law and society;* 376-404.
[50] ibid.

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of **his** term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice president shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

From the forgoing, it appears that much has not changed since Lord Radcliffc's expression in the use of plain language prompting John Donaldson MR to hold in *Merkur Island Shipping Corp v Laughton*[51] that:

> The efficacy and maintenance of rule of law, which is the foundation of any parliamentary democracy, has at least two prerequisites. First people must understand that it is in their interest that they should live their lives in accordance with the rules. Second, they must know what those rules are.

Clearly, Nigeria just like the United States of America have made frantic efforts towards using plain language to achieve efficiency in drafting constitutional review provisions; however, more is needed to achieve the benchmark in both jurisdictions.

4.5. Differences and Similarities in Style of Drafting Constitutional Review in Nigeria and the United States of America at a Glance

This chapter has effectively dealt with the analytical evaluation of drafting style of constitution review in Nigeria and the United States of America; however, there is the need to break down their differences and similarities for easy comprehension.

[51] [1983] 1 All ER 334, as quoted in the Law Reform Commission of Victoria (Report No.9) "Plain English and the Law" 64.

4.5.1. Differences in Style of Drafting Constitutional Review in Nigeria and the United States of America at a Glance

S/N	Style	Nigeria	United States of America
1.	Form of drafting constitution review provisions	The form of drafting constitutional review provision is incremental style. By this, multiple legislative bills containing different unrelated items are put forward for review.	Non-incremental constitutional review style is used. It requires that all items for constitutional review are drafted on one constitutional amendment proposal by the parliament.
2.	Legislative structure	In addition to other legislative structure, Nigeria makes use of marginal notes, paragraphing, numbering (as against renumbering) and schedules. There is no use of preamble.	In addition to other legislative structure, there is the use of preamble. However, there is the absence of marginal notes and clear legislative paragraphing. Additionally, owing to the indirect method of review, provisions are numbered at the end of the constitution.
3.	Method of drafting constitution review	Nigeria is accustomed to direct method of review. The method requires that constitutional provisions are amended on the body of the original provisions	There is the use of indirect method of review. The method requires that constitutional provisions are placed after the last provision of the constitution.
4.	Principle of plain language	The principle of plain language encourages brevity of legislative texts. But the codify nature of Nigerian constitution, has not adhered to brevity.	The constitution of the country is framework in nature and that is consistence with the plain language principle of brevity.

4.5.2. Similarities in Style of Drafting Constitutional Review in Nigeria and the United States of America at a Glance

S/N	Style	Nigeria	United States of America
1.	Legislative structure	Nigeria uses long title, short title and enactment formula	In the united States of America, these provisions are also used.
2.	Plain language	There is no compliance to gender neural drafting.	In the united States of America, there is no compliance to gender neural drafting

4.6. Lessons Available to Nigeria from the Drafting Style of Constitutional Review in the United States of America and Vice Versa

It is safe to agree that no style of drafting constitutional review provisions is utopian; rather what is paramount is the application of required rules of drafting in jurisdictions. Again, it is not disagreeable that jurisdictions could improve drafting styles through constructive learning of practices of other countries. While Nigeria is part of the global community and mirrored her style of constitutional and legislative practices from the United State of America, there is possibility that the former could learn a few from the style of drafting constitutional review provisions from the latter and vice versa.

4.6.1. Lessons Available to Nigeria from the Drafting Style of Constitutional Review in the United States of America

a. The Use of Non-Incremental Style of Drafting Constitutional Review

Nigeria has to do away with incremental style of drafting constitutional review provision while adopting the United States of America non-incremental version. The reason for this lesson is simply based on accessibility of provisions to the targeted audience. Accessibility of review provisions just like accessibility of laws requires in this context that constitutional review provisions should be complete on one document without demanding from the audience to search through many drafted constitutional review bills to make holistic sense of constitutional review regime.

In the United States of America, Joint Congressional Proposals for constitution review are usually drafted on a set of document aiding constitutional audience to remain focused only on the contents of the document than going through lots of proposals as is the case in Nigeria.

Again, the fear of presidential refusal to assent to constitutional review bills in Nigeria may be a positive political strategy but it possesses potentials for inaccessibility and wholesomeness of the review provisions. Therefore, if the essence of modern legislative constitutional drafting is centred on clarity and accessibility of provisions, it will be out of place if Nigeria does not borrow a leaf from non-incremental form of drafting constitutional review as practiced in the United States of America.

Non-incremental style of drafting constitutional review is preferable as it serves the United States of America positively just as it had served Nigeria before the commencement of political stands-offs in the Seventh National Assembly. This style allows for easy reading and uniformity in drafting constitutional review provisions; it also reduces time spent in accessing constitutional review bills.

b. The use of Plain Language

Another constitutional drafting practice in the United States of America which Nigeria can learn from is the use of plain language. Plain language drafting focuses on brevity, clarity and completeness; attributes which the Constitution of United States of America is relatively acquiesced with. In Nigeria however, constitutional review provisions are not brief and some provisions are not clear enough. Therefore, it is imperative that Nigeria advances further the use of plain language in constitution review.

The brevity of the Constitution of the United States of America allows other legislations to deal with incidental and consequential issues unlike in the current verbose constitution in Nigeria which is very much codified jettisoning any form of brevity in the process.

Consequently, provisions have to be unambiguous and it seems some parts of Nigerian constitution are not agreeable. For example, the Nigerian constitutional provision in chapter two, the debate on the need for presidential assent and other myriad of problematic provisions question the impact of clarity in the Constitution. Ultimately, in 2023, necessary courts will

have to interpret the provision of section 134 of the constitution[52] as to whether to be declared winner of Presidential election in Nigeria, a presidential candidate must win a quarter of votes in 24 States – which makes up the two-thirds – as well as the Federal Capital Territory (FCT), or without the FCT[53]

In modern legislative constitutional drafting, plain language is no longer considered as a mere style of drafting, rather it is seen as a necessity owing to growing demand for understanding of laws by non-lawyers. Again, plain language has become one of the major trends of drafting constitutional review and since the first constitutional review in the United States of America to the last in 1992; constitutional review in that jurisdiction has been drafted with almost total recourse to this principle. Therefore, to ensure clarity, brevity and fewer visitations to courts for constitutional interpretations in Nigeria, the country has to learn to adhere to this principle just as it is the case in the United States of America.

c. The use of Legislative Drafting Manual

Another lesson available for Nigeria in the drafting style of constitutional review of the United States of America is the use of drafting manual. Drafting manual is a piece of document or a handbook created to guide legislatives drafters. It contains the drafting principles and structures of different types of legislations including constitution and constitution review.

In the United States of America, the Senate and the House of Representatives have drafting manuals. This helps writers of American constitution to draft constitutional proposal seamlessly and achieve uniformity. This is quite visible as the country has progressively adhered to non-incremental form of drafting constitutional review, from the first constitution review to the last in 1992.

However, in Nigeria, the absence of drafting manual has left constitution drafters to resort to individualism. Individuals remain creative and personal to achieve results. It could be comfortably argued that the abandonment of non-incremental form of drafting constitutional

[52]*CFRN 1999,opcit*, 16.

[53]Dr Olisa Agbakoba, 'Flawed: Section 134(3) of the 1999 Constitution on Presidential Election Runoff' Thisday (Nigeria, January 2023) https://www thisdaylive.com/index.php/2023/01/24/ flawed-section-1343-of-the-1999-constitution-on-presidential-election Runoff – THISDAYLIVE 26 March 2023.

review provisions and swift adoption of incremental style is attributable to the lack of drafting manual. This is true because drafting manual aids consistency. Therefore, if drafting manual encourages consistency and uniformity which is lacking in Nigerian, it becomes a huge lesson the country has to learn.

4.6.2. Lessons Available to the United States of America from Drafting Style of Constitutional Review in Nigeria

a. The Use of Marginal Notes

The United States of America can copy form Nigeria the use of marginal notes in drafting constitution or constitution amendment. Marginal note is one of the explanatory materials to bills and legislations. They aid legislative audience make sense of sections they are highlighting at one glance. They also improve clarity of constitution provisions, but the reason for their absence in the constitution of the United States of America begs the question.

In Nigeria, marginal notes are ever present feature in the constitution review scheme. Written on either side of the section, smart readers of technical sections they highlight could easily decipher the content of the provision (though not ideal). But such opportunity is lost on the United States of America as their absence require a compulsory reading of sections, a venture potentially too difficult for non-lawyers in the country. There is no doubt about the roles of marginal notes in a piece of legislation; therefore, the United States of America should adopt this arrangement from the Nigeria.

b. The Use of Paragraphing

Another legislative drafting style the United States of America can copy from Nigeria is the use of paragraphing technique. Paragraphing legislative text aids in making provision more readable and unambiguous among other roles. It breaks worded sections or provisions into smaller units that readers who are interested in reading a particular unit could understand it effortlessly.

However, in the United States of America, paragraphs are written in pose-like style with punctuations such as comas, semicolons, colons and full stops to aid comprehension of provision thereby reducing legislative elegance in the process (the 12th Amendment to the Constitution of the United States of America is referred).

In Nigeria, paragraphing is essential to understanding constitutional provisions and its alterations. With paragraphing, items could be tabulated orderly and provisions could be devoid of repetitions. For this reasons, the United States of America should learn from Nigeria this style of drafting to improve elegance in their domain.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

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

5.1. Summary of Findings

This research work has achieved its basic aims and objectives by exploring and comparatively evaluating different drafting styles in constitutional review as practiced in Nigeria and the United States of America. It also addressed the issues and questions that were raised in the research and proffered solutions and recommendations.

The major findings in this research work are as follows:

1.That the use of direct method of drafting constitutional review in Nigeria and the indirect method as used in the United States of America are not adequate enough to demonstrating what transpired to existing provisions before the emergence of new provisions. This has raised a clear possibility of applying both direct and indirect method of drafting constitutional review provisions in a single constitutional draft. Their interaction guarantees effective communication and better understanding of constitutional review provisions.

2. That in Nigeria and the United States of America, there is no compelling adherence to the principle of plain language in drafting constitutional review, with particular mention of gender neutrality principle and the use of litigation words and phrases in the case of Nigeria.

3. That in the case of Nigeria, incremental form of drafting constitutional review encourages proliferation of constitutional review bills thereby undermining accessibility of review provisions.

4. That Nigeria does not have a drafting manual and a drafting office. For uniformity in drafting legislative constitution review, drafting manual and drafting office are important establishments- a situation that is familiar with the United States of America. However, in Nigeria, the lack of drafting office that is supposed to be charged with the responsibility of producing drafting manual has all together introduced some inconsistencies in the style of drafting constitution review. An example of such inconsistencies is the swift change from

non-incremental to incremental style of drafting constitution review which is made easier by the lack of drafting guide. Ideally, drafting guide sets the tune for drafter but in its absence, drafters would either circumvent the existing style or introduce their personal style, perhaps without consultation; and that is the case with the drastic shift from non-incremental to incremental form of drafting constitution review in Nigeria.

5. That there is no use of preamble in drafting constitution review in Nigeria. As a general rule, preamble is not used in legislative review or amendment because it serves the same purpose as long title, although one of its exceptions includes when the review is of constitutional importance. Therefore, it suffices to say that Nigeria is only following the trend in the general rule than any of the exceptions.

6. That there is no use of marginal notes in drafting constitution review in the United States of America. Marginal notes help constitutional audience to make sense of provisions they are describing at a glance. But their absence in the Constitution of the United States of America can be adjudged discriminatory particularly to those who may not have all the time to read the entire provision they are addressing.

5.2. Recommendations

The researcher recommended as follows:

1. That the integration of direct and indirect method of drafting constitutional review should be considered in both jurisdictions as the option will aid clarity, readability and easiness in drafting constitutional review text. To achieve this, review of extant constitutions through indirect method should be drafted while showing through different interface the changes made to the constitution by the review.

2. That firm observance to plain language principle is considered in both jurisdictions while drafting constitutional review. Constitutions that are difficult to understand are derogatory to citizens' rights just as it is abdication of legislative duty for courts to make laws in form of interpretation due to insobriety of legislators' intentions. Again, there should be no displacement of gender neutral drafting in constitutional review scheme.

3. That the benefits of drafting constitutional review in non-incremental style out-ways the incremental system and should from part of the style in Nigeria. Nigeria drafts constitution

review in incremental style- a system which requires a review of multiple items drafted on different legislative bills. This approach encourages proliferation of constitution alteration bills and inaccessibility of provisions as legislative audience may have to search through the entire bills to make wholistic sense of items to be reviewed in constitution amendment circle. Therefore it is recommended that Nigeria should jettison this practice and adopt the non-incremental style which was once experimented in the county as it is the current practice in the United States of America.

4. That Nigeria should produce a legislative drafting manual and establish a drafting office. Usually, just like in the United States of America, drafting office are charged with the responsibility of producing drafting manual but in Nigeria, both drafting office and drafting manual are missing in scheme of things prompting inconsistencies in drafting provisions. In this regard, a readily available example is the switch from non-incremental to incremental style of drafting constitutional review which is aided by lack of drafting manual in the country. Therefore, for consistency purpose, a drafting office and drafting manual is recommended.

5. That Marginal notes should be incorporated as a legislative structure and as an explanatory material in drafting constitutional review in the United States of America. Due to high volume of constitutions and the technical terms they are sometimes enveloped, marginal notes provide description of the sections they are referred and does so almost instantaneously. Therefore, if legislative drafting promotes quick accessibility of provisions, the United States of America has to consider the use of marginal notes in drafting constitution review in the domain.

5.3. Conclusion

In any democracy inspired by the concept of constitutionalism, the only formal means of tampering a constitution is through constitutional review. Nigeria and the United States of America both adherents of this concept have had their respective constitutions formally reviewed, multiple times, although the drafting styles explored in executing each jurisdictional review varied. For example, the United States of America is quite comfortable with indirect method of drafting constitutional review while Nigeria prefers direct method, and because Nigeria is considered as young democracy with codified constitution, incremental from of constitutional review is permissible unlike the United States with age-

long history of democracy and with a framework constitution, has impressively drafted review provisions in non-incremental style.

Similarly, as unweaving support for the use of plain language in drafting constitutional review provisions continues to gain momentum, both countries have joined the trail albeit without reaching set-point, and as for the use of legislative structure in drafting constitutional review, both countries have adopted legislative structure that suit them. What is very clear however is the imperfection of any jurisdictional drafting style. Therefore, whatever drafting style adopted by both countries, the focus should remain on the citizens ability to quickly make sense of the constitution review provisions. To achieve this, the roles of drafters have never been more lucid, it includes sticking with the drafting styles of the drafter's jurisdiction and adhering to the drafting manual.

This research work is potentially developed that it contributes to knowledge. Firstly, it helps to comparatively analyze and explore the practice of drafting constitutional review in Nigeria and the United States of America. By discussing the practice in each jurisdiction, readers are exposed to the drafting styles of both countries. Secondly, since the bases for the comparison of this work are hinged on the forms and method of drafting constitutional review provision as well as the use of legislative structure and principle of plain language, the work exposed the strength, weaknesses and opportunities of these subjects. These apparently provide readers of this work with the requisite knowledge to choose styles for drafting constitutional review for their respective jurisdictions.

Consequently, the topic of this research cannot be completely exhausted, as a result, this dissertation proposed areas for further research to include forms of drafting constitutional review, giving that there is almost infinitesimal literature on the topic. Further research to this area will enable drafters to better understand the concept and provide legislative advice to clients and policy makers.

Additionally, further research is required for the third option to methods of drafting constitutional review provisions. Research in this respect is apt as it integrates the advantages and disadvantages of direct and indirect methods of drafting constitutional review, then creating a method that seems to absorb the imperfections of the two. Another importance of

further research to this option is to improve its visibility and acceptability, usage or criticisms as the case may be.

In final analysis, the research work has achieved the aims and objectives in the various chapters of the dissertation. Also the research questions raised were answered and the significance of the research to Nigeria, United States of America and the global community were made manifest in the body of the work.

BIBLIOGRAPHY

Text Books

Adem DT, Understanding Bills,(LexisNexis 2014).

Baber, JJ, "An Analysis of Different Constitutional Amendment Models"(Law School Student Scholarship 2014)

Bakshi PM, An Introduction To Legislative Drafting, Bombay(NM Tripathi 1972)

Crabbe VCRAC, Legislative Drafting (Cavendish Publishing Limited, First ed.1993)

Chakrabarti NK, Principles of Legislation and Legislative Drafting (R. Cambray& Company Private Limited2014)

Christopher W, Legal English and Plain Language: An Introduction, (ESP Across Cultures 1 2004)

Kammen MG, A Machine That Would Go of Itself: The Constitution in American Culture (St. Martin's Press, 1986)

Ladan MT, Introduction to Jurisprudence: Classic and Islamic, (Lagos: Malthouse, 2006)

Marks SP,Human Rights: A Brief Introduction,(Harvard University, 2016)

Mezey ML, The Constitution Excerpted From Presidentialism: Power in Comparative Perspective (Lynne Rienner Publishers, 2013)

Richard A. Amendment and Revision in the Unmaking of Constitutions, Comparative Constitution Making (Edward Elgar Publishing, 2019)

Roger P, Ballot Readability and Plain Language, Master of Arts in Professional Writing Capstones 61(2019)

Thornton G. C, Legislative Drafting (4thEdn, Butterworths 1996)

Thring HTB, Practical legislation: The composition and language of acts of Parliament and business documents. (J. Murray1902)

Articles in Journals

A Step-By-Step Process of Amending the Nigerian Constitution, Published by: Policy and Legal Advocacy Centre (PLAC) 2014 Reprinted 2019

Adebowale HI, The Sixth National Assembly and Constitutional Amendment in Nigeria- A New Era or a Fait Accompli? Scholars International Journal of Law, Crime and Justice Scholars Middle East Publishers, Dubai, United Arab Emirates Journal

Akhil RA, 'The Bill of Rights and the Fourteenth Amendment, The Yale Law Journal, Vol. 101, No. 6 Apr. 1992,

Amah EI, Federalism, Democracy and Constitutionalism: The Nigerian Experience; Journal of Law, Policy and Globalization, Vol.53, (2016)

Arnold IB, Understanding Separation of Powers, Pace Law Review, Vol. 7 Art. 2 (1987)

Ashutosh B, 'The Democratic First Amendment' North Western University Law Review (110) (5 1097) (2016)

Bell TW & Mary Bill, "Property" in the Constitution: The View from the Third Amendment, Bill Of Rights Journal, Vol. 20 No.1243 (2012)

Da'ud KA, Constitutionalism, Democracy and National Development in Nigeria, Research on Humanities and Social Sciences Vol.4, No.10, (2014)

Dixon R, "Constitutional Amendment Rules: The Denominator Problem" University of Chicago Public Law & Legal Theory Working Paper No. 346, (2011)

Dodd WF, 'Amending the Federal Constitution' The Yale Law Journal, Feb., 1921, Vol. 30, No. 4 (1921)

Edward TS, States and the Nation: State Cohorts and Amendment Clusters in the Process of Federal Constitutional Amendment in the United States, Law & Society Review, Vol. 4, No. 3 (1970)

Elliot B, Federalism, International IDEA Constitution-Building Primer, International Institute for Democracy and Electoral Assistance (2nd edn, 12, 2017)

Ellis PO, Law-Making by Popular Vote; Or, the American Referendum, The Annals of the American Academy of Political and Social Science, Vol. 2 (1891),

European Commission for Democracy through Law (Venice Commission) Report on Constitutional Amendment Adopted By the Venice Commission at Its 81st Plenary Session (Venice, 11-12 December 2009)

Everett PW, Limit of Power to Amend Constitution, American Bar Association Journal, February, Vol. 7, No. 2 (1921)

Folsom VC, Constitutional Development in the Countries of the Americas: University of Miami Inter-American Law Review, Vol. 9, No. 3 (1977)

Forstater IB, House Legislative Counsel's Drafting Manual for Drafting Style, US House Representatives U.S Government Printing Office, 1995

Fritz CG. "American Sovereigns: The People and Americas Constitutional Tradition before the Civil War." (2008)

Glanville W, "Language and the Law" Law Quarterly Review Vol. 61(1946)

Gordon J, The Concept of Human Rights: The History and Meaning of its Politicization, Brooklyn Journal of International Law, Vol. 23 No. 3 Article 1, (1998)

Graham-Harrison WM, An Examination of the Main Criticisms of the Statute Book and of the Possibility of Improvement. J. Soc'y Pub. Tchrs. *L.*, 9. (1935)

Graham FP, The Role of the States in Proposing Constitutional Amendments Source: American Bar Association Journal, Vol. 49, No. 12 (1963)

Griffin SM, *The Nominee Is . . . Article V, in* Constitutional Stupidities, Constitutional Tragedies 51, 52 (William Eskridge & Sanford Levinson, 1998)

Hedling, N. "The Fundamentals of a Constitution." International *IDEA* (2017)

Mazzone J, The Creation of a Constitutional Culture, 40 Tulsa L. Rev. 671 (2013)

Ofo N, Amending the Constitution of the Federal Republic of Nigeria 1999, African Journal of Legal Studies 4, 123, Matinusnighoff publishers (2011)

Ogoloma F, The Theory of Separation of Powers in Nigeria: An Assessment; An International Multidisciplinary Journal, Ethiopia **Vol**. 6 No. 26 (2012)

Rehnquist WH, The Notion of A Living Constitution, 54 Tex. L. Rev. 693 Texas Law Review May, (1976)

Ross SF, Where Have You Gone, Karl Llewellyn - Should Congress Turn Its Lonely Eyes to You, Vanderbilt Law Review 45, 561 (1992)

Roshwald M, The Concept of Human Rights, Philosophy and Phenomenological Research, International Phenomenological Society Vol. 19, No. 3 (1959)

Stark S. "Why Lawyers can't Write" Harvard L Rev (97) 1389, (1984)

Strauss DA, The Irrelevance of Constitutional Amendments, 114 Harv. L. Ev. 1457(2001)

Online Journal

Mainwaring S, Presidentialism, Multiparty Systems, And Democracy: The Difficult Equation Working Paper #144 - September 1990: https://www.researchgate.net/publication/277296422

Nigeria's constitutional review: the continuing quest for a legitimate Grundnorm|ConstitutionNethttps://constitutionnet.org/news/nigerias-constitutional-review-continuing- quest-legitimate-grundnorm (2022)

Internet sources

Amrit Kharel, *Doctrinal Legal Research*<https://www.researchgate.net/publication/323762486_Legal Research>

Extract from A Bill for an act to further alter the provisions of the Constitution of the Federal Republic of Nigeria, 1999 And for other Matters connected therewith, 2013https://www.premiumtimesng.com/wp-content/files/...

Nigeria's constitutional review: the continuing quest for a legitimate Grundnorm | https://constitutionnet.org/news/nigerias-constitutional-review-continuing-quest-legitimate-grundnorm

The Constitution of Federal Republic of Nigeria, 1999, https://www.constituteproject.org
The United States of America Constitution, https://www.constitutioncenter.org

Newspapers

Buisnessday Newspaper '1999 Constitution: Here are 68 proposed amendments to know *'Business Day* (Lagos, February 27 2022) James Kwen, <https://businessday.ng/news/article/1999

Thisdaylive Newspaper 'Flawed: Section 134(3) of the 1999 Constitution on Presidential Election Runoff' Thisday (Nigeria, January 2023) https://www thisdaylive.com/index.php/2023/01/24/ flawed-section-1343-of-the-1999-constitution-on-presidential-election Runoff – Dr Olisa Agbakoba, Thisdaylive 26 March 2023.

Dissertations

Ibrahim M, 'Nigeria's Constitutional Development and Constitutionalism' 9. 1 (2022).<https:www.studocu.com/in/document/university-of…> accessed 25th December, 2022.

Dictionaries

Bryan AG, and Others, Black's Law Dictionary (6thedn, Thomson Reuters 2009)

Jaja TC, A Dictionary of Legislative Drafting and Law Making Terms: A Lexicon for Legislative Drafting Lawyers and Legislators (Lambert Academic Publishing 2012)