

**THE IMPERATIVE OF REGULATING LEGISLATIVE DRAFTERS IN
NIGERIA**

BY

**Patience Egechi NONSO-NWANZE(MRS.)
(PG/NLS2015022)**

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ABSTRACT

Legislative drafters are vital for drafting legislation and transforming policies into law. Legislation is a permanent enactment that stands on its own and speaks for itself without assistance or explanation from the drafter. Legislative drafting hence requires professionals known as legislative drafters. This essential body currently has no regulation guiding it to maintain and control the ethics of the practice. Thus, the absence of regulation has often resulted in some poorly drafted legislation as some of the drafters are non-professionals or non-experts in legislative drafting. The primary objectives of this research are to examine the necessity of regulating the legislative drafters, to identify the effects of the non-regulation of legislative drafters, to determine the steps or measures to regulate the legislative drafters in Nigeria, and to understand the significance of regulating legislative drafters. The justification is ensuring that the legislative drafters are regulated to encourage good quality and effective legislation in Nigeria.

The doctrinal methodology was applied for the research, with data collated from diverse Acts, judgments, legal principles, case laws, textbooks, journals, and statutes, and a literature review was carried out to see how effective some legislations were. The study compares some Acts that conflict with existing legislation that render them unconstitutional and of no effect, especially those that conflict with the Constitution.

The study found the need to regulate legislative drafters as it was discovered that the after-effects of using non-professionals were observed in some Acts/Laws like the ICPC ACT, EFCC ACT, Electoral ACT, etc. Also, the finding is that regulating legislative drafters is an added advantage to the profession as it promotes that field of law.

The study recommends stopping or reducing poor quality or ineffective legislation is to have a regulation guiding all legislative drafters. This study recommends enacting an Act by the National Assembly to regulate legislative drafters as obtains in other professions such as the Dental Council of Nigeria, the Council of Regulation of Engineering in Nigeria, etc. This will also align with international best practices as done in countries like Somalia, Canada, and USA. This research finally suggests that the National Assembly in addition to the regulation may enact an Act like the Legislative Negligence Act, similar to the Canada 2003 Act which states that, if a drafter drafts a Bill that results in litigation, then the salary of the drafter will be deducted until the litigation is over. This will promote seriousness and carefulness among legislative drafters in Nigeria.

KEYWORDS: Legislation, Legislative Drafters, Legislative Drafting, Regulation, National Assembly

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study.

The development of legislation is critical to the strength of an ever-changing society. Such development is necessary to avoid a gap between the development of society and the rules that help regulate the group's needs. Therefore, there is the ultimate need to develop strong legislative competencies that will help ensure sophisticated and high-quality legislation that is stable and sustainable, reflects the principle of effective drafting popularly known as the Seven Cs of effective legislative drafting which includes clear, concise, correct, coherent, concrete, complete and courteous that ensures that the rule of law is compelling as required.¹ Once a writer follows this principle, they are likely to produce documents that will achieve their intended purpose and be well accepted by the audience.

At first glance, it may seem that drafting laws is child's play because we often underestimate the importance of drafting laws while respecting the rule of law. The general view of legislative projects is that a drafter should only be concerned with writing style, grammar, vocabulary, accuracy of language, and text structure. However, if these elements are considered important, their importance should not be prioritized over the content of the text or the rule of law. This issue is addressed by Sedman and Apesekry, where they point out:

There is a deep-rooted unity between the form and content of legislative drafting. Therefore, it is considered a superstition that the drafters have nothing to do with the content of the law, but only with its form.²

¹ A.B. Dababneh and E.A. Al-Husban, Practical Criteria for the Soundness of the Legislative Drafting Approach Evaluative and Analytic Study, *European Journal of Social Sciences* (2011) 21, (4).

² Ann Sedman, R. Seedman, and N.Apesekry, *The Legislative Drafting for Democratic Social Change, A Guidebook for Drafters*. (Sabrah for publishing and translation, Egypt, 2005)

The art of legislative drafting is the process by which formulated policies are transformed into a legal language known as a bill for onward submission to the legislative chamber for approval into Law or Acts respectively. When drafting legislation, the drafter is obliged to ensure the correct interpretation of the provision; He must first understand what is expected of him and know who his audience is. Their main task is therefore to implement the guidelines intended by the founder of the law. This is often a difficult task that leaves room for uncertainty.³ And this where the expertise of the legislative drafters comes to play.

The drafting process begins when the drafter receives instructions from the policy or decision-makers and begins to incorporate them into the draft law, and ends when the draft law is finalized and submitted to the Legislature for its passage into law, the stages are; Taking instructions, analysing instructions and gathering information, drawing up the outline, the drafting, editing, and scrutinizing.

The legislative drafters were often advised to follow certain steps to ensure that they had received and understood the instructions. These steps include (i) gathering sufficient background information on the legislation to be drafted. Therefore, all relevant extracts of all documents relating to the proposed legislation should be made available to him to facilitate their understanding of the instructions; (ii) understanding the objective of the legislative proposal to present a good bill without which it will not be possible to produce strong legislation; (iii) considering how they would like to achieve the objectives of the legislative proposal and then decide whether they would like to create a new body responsible for implementing the legislation or to amend the existing legislation. What structure should this body have and what powers will be given to it? (iv) The drafter must be able to carry out adequate research to examine the possible

³ E. Majambere, Clarity, precision and unambiguity: aspects for effective legislative drafting, Commonwealth Law Bulletin (2011) 37:3, 417-426

consequences of the law and any problems related to the legislation. If a problem arises, especially with contradictory legal acts, the court decides to declare one of the provisions invalid. A case in point is the decision of the Federal High Court in Abuja, in the case of **Labour Party v INEC & Attorney General of the Federation**⁴ seeking the clarification of section 140(2) of the Electoral Act 2010. The court annulled the provision of section 140(2) of the Electoral Act 2010 due to its unconstitutionality and incompatibility with the CFRN 1999. Justice Gabriel Kolawole maintained that the National Assembly is bereft of legislative competence to dictate to the decision it should take over a suit filed before it, just as he described sections 140(2) and 141 of the Electoral Act 2010, as an affront to the concept of separation of power. Therefore, section 140(2) of the Electoral Act should be deleted from the Act as it was inconsistent with the provisions of the Constitution on the powers of the court as contained in section 140(2) of the Electoral Act 2010 due to its incompatibility with the Constitution of the Federal Republic of Nigeria in relations to the powers of the court or tribunal as contained in s.4(8), s.6(1) and (2), s.6(6)(a) and(b), s.239(1), s.246 and s.286 CFRN 1999. Similarly, in the case of **Attorney General of Abia State v Attorney General of the Federation**⁵, the court declared unconstitutional, an act of the National Assembly (Legislation) which sought to extend the tenure of the Local Government Council from three to four years. The court submits that the subject matter of election into the local government council did not come under the legislative competence of the National Assembly, rather it was within the legislative power of the State Assembly.

To enhance effective legislation in Nigeria, a legislative drafter must have a sound knowledge of the law and its principles as a prerequisite which is only obtained from studying the law as a legal profession. The drafter must have a sharp, critical, imaginative, open, and intrusive mind able to

⁴ The Nation Newspaper Vol 6 No 1807 July 1, 2011 page 4

⁵ (2002)3 SCNJ Page 106

go out of his comfort zone and ask questions before he begins his process and to be able to understand the perspective of different consumers of the law. The drafter may need to work under pressure, in a team, and with little or no supervision; he must possess adequate concentration and discipline. He must have good analytical skills as being able to analyse issues is very crucial to drafting. Being able to handle confidential information as a drafter is very important, as it shows maturity in dealing with confidential documents as care must be taken in handling such documents.⁶

In drafting a bill, the drafter must ensure that the rule of law is maintained, as it is required that the law should be clear, precise, and consistent for it to be predictable. The rule of law demands that, as much as possible, people know in advance what the law demands of them, what the law grants to them, and what sorts of behaviour they can expect from officials. The drafter is under a duty to assist the policy-maker in shaping the policies and identifying the gaps which already exist in the policy but must not become or take up the role of the policy-maker. The basic skills prerequisite for every legislative drafter to possess are; Simple communication skills, Organizational skills, Time management skills, and Language skill

The research identified the aftermath of the non-regulation of Legislative drafters to be; ineffective legislation, unaccountability, and lack of transparency of the producers and key actors involved in the process of legislation production (legislative drafters) in Nigeria who has the requisites knowledge to produce good quality bills. In the field of legislative drafting, it has been established that ideally the rules that govern legislative drafting, and the production of good quality Bills and legislation, ought to be clearly and “unequivocally” stated and specified within the provisions of the constitution (the supreme law) of any democratic society that upholds the rule of law. It further

⁶ Ilbert, Sir Courtenay Peregrine, *The Mechanics of Law Making* (University of Colombia Press, New York 1914)109.

states that, whenever the constitution is silent, there ought to be either primary or subsidiary legislation that regulates legislative drafters to ensure the production of good quality legislation.⁷ Neither the 1999 Constitution of the Federal Republic of Nigeria (as amended) nor any existing legal framework stipulates in any clear law that guides the conduct and behaviour of legislative drafters for producing good quality legislation.

The assessment of this study is to show that, there is a need to regulate legislative drafters in Nigeria, as this research found that the involvement of non-professionals, i.e. lawyers without cognate experience, formal qualifications, and expertise in legislative drafting, has caused lots of harm to the legislative drafting profession and the quality of legislations enacted in Nigeria.

The researcher states that the solution is to issue regulations to guide all legislative drafters of laws. A regulation is therefore described as a mechanism used to guide and control legislative drafters of law to ensure that subsequent legislative proposals are of good quality and achieve their intended purpose. The researcher describes different procedures and methods of regulating legislative drafters to be included in the legislation. The researcher finally prayed that the National Assembly passes an Act to regulate the legislative drafters. This regulatory Act has been enacted in other professions such as the Dental Council of Nigeria, the Council of Regulation of Engineering in Nigeria (COREN) and so on.

1.2 Statement of the problem

While it is recognized that quality legislation is an important tool for achieving national and economic development, for that reason the producers or makers of the legislation should be guided

⁷ Ibid.

and monitored to ensure quality and consistent legislation, enhance accountability of the drafters, promote effective and efficient legislation and build the public trust of the legislative drafters.

This research identifies that since the existence of legislative drafting as a professional course for legislative drafters, there is no regulatory body to maintain and regulate the ethics of practice and conduct of the professionals in this field. Neither the 1999 Constitution of the Federal Republic of Nigeria nor any existing legal framework provides clear details on the guidelines of operation to enable members give quality of legislation to Nigerians.

Another problem highlighted in this study is that the involvement of laypeople, non-professionals, and Lawyers without experience or formal qualifications and expertise in drafting bills, this results in poor quality of bills and proposed legislation in Nigeria. This is admitted by a former Clerk (Dr. Adamu Fika) of the Nigerian National Assembly as follows:

Competence is required of Lawyers engaged in drafting legislation relating to highly technical aspects of law. A failure to properly translate the substantive policy into the appropriate law adversely affects the policy, the lawyers are like midwives in the birth of laws and so it behoves them to strive hard to help bring forth laws that are effective, clear, precise, intelligible and capable of only one interpretation, which is the true purpose and intent of the policy as envisaged by the policy initiators.

Ineffective legislation has been identified as the core negative effect of the non-regulation of legislative drafters in Nigeria because there has not been a formal monitoring or maintenance and regulation of the practice and conduct of the legislative drafters. Failure to undertake and regulate this conduct has led to the wastage of national resources as evident in the cost of paying and re-paying drafting personnel to draft and re-draft Bills. For example, the Petroleum Industry Bill (PIB) has at least five (5) versions. The drafting of each version was done by a different team of drafters without any penalty for the formal personnel who did not draft what they were asked to draft.

Although there are numerous problems and causes of poor quality of bills and legislative proposals in Nigeria, the reason for this research is not to discuss the problems but to conduct research on the necessity of regulating legislative drafters in Nigeria.

1.3 Key Research Questions

This problem brings to the forefront the following questions intended to be answered in this research which includes:

- a) Why is it necessary to regulate legislative drafters in Nigeria?
- b) What are the effects of non-regulation of legislative drafter?
- c) How can legislative drafters be regulated in Nigeria?
- d) What is the significance of regulating legislative drafters in Nigeria?

1.4 Aim and Objectives of the Study

This study aims to give an overview of the imperative of regulating legislative drafters in Nigeria, to achieve the following objectives, which are to:

- a) Examine the necessity of regulating the legislative drafters.
- b) Identify the effects of non-regulation of legislative drafter in Nigeria;
- c) Determine the steps or measures of regulating the legislative drafters in Nigeria; and
- d) Understand the significance of regulating legislative drafters as professionals.

1.5 Scope and Limitations of the Study.

This research work explores legislative drafters' regulation as the subject matter of this study and focuses on the general meaning, concept, rationale, and procedure for regulating legislative drafters in Nigeria. This research made an analysis of the legislation made by the non - legislative drafters over the years, and the loopholes in the legislation which render them ineffective.

This research is focused on Nigeria's legislative drafters only, though references were made to legislative drafters of other jurisdictions like Europe, America, Canada, Somalia, etc.

To carry out comprehensive and effective research, it is normal to experience some impediments, including limitations that the researcher encounters during this work. The limitations of this research were finance and the short time of a few months available to the researcher to balance classwork and the research work.

1.6 Significance of the Study.

This research is significant as it gives an overview of the requests or advice to regulate legislative drafters as professionals in Nigeria. One major significance of regulating legislative drafters is that it protects the constitutional principles of law. In doing that it ensures that; a) the laws produced by the legislative drafters comply with the constitutional and legal requirements and reduce the risk of legal challenge in court as seen in the LABOUR PARTY and ATIKU cases supra and Section 140(2) of the Electoral Act 2010. b) the legislative drafters will ensure that human rights of the citizens are put into consideration in drafting any legislation they are bring out. The fundamental human rights and citizens' rights were protected.

This study will benefit the Legislators, Legislative Drafters, and the general public, as it will help to curb ineffective legislation and ensure good governance, it will appraise the government's performance of the day, and criticize bad performance when necessary for better governance. This study will benefit the citizens by awakening their consciousness to demand accountability from the legislative drafters and good governance from their elected representatives.

The findings of this research will assist the employees of the National Assembly and the legislators responsible for Law-making. Furthermore, this study is beneficial to the teachers, lecturers,

academia, students, and researchers as this forms the academic significance of the study. It stands to serve as a source of reference for further studies; this forms the approach of significance of the research.

1.7 Research Methodology.

This study adopts a doctrinal research method, it evaluates and explains ways to achieve effective legislation in Nigeria, with the need to regulate legislative drafters as professionals in Nigeria. Doctrinal research also known as desk or library research method involves research of laws based on textual content analysis. This approach analysis the legal rules, doctrines, legal principles, rule of law, judiciary pronouncement, judiciary precedent, and legal norms. This study used in-depth research, analytical studies, and a wide range of academic works to present a logical and meaningful work at the end of this study.

The researcher used the survey strategy method of data collection and analysing of data collected to examine cases of legal origin through primary and secondary legal sources, which include the Constitution, procedural rules, laws, textbooks, dictionaries, articles, periodicals, online reference materials, handouts, and other relevant documents such as judicial precedents. In this context, references were made to reports on legal provisions and important decisions.

This doctrinal method was used to determine the constitutionality and the substantive position of some laws. In the case of **Labour Party v INEC & Attorney General of the Federation**,⁸ the court held that section 140(2) of the Electoral Act 2010 should be deleted from the Act as it was inconsistent with the provisions of the Constitution on the powers of the court as contained in section 140(2) of the Electoral Act 2010 due to its incompatibility with the Constitution of the

⁸ The Nation Newspaper Vol 6 No 1807 July 1, 2011 page 4

Federal Republic of Nigeria in relations to the powers of the court or tribunal as contained in s.4(8), s.6(1) and (2), s.6(6)(a) and(b), s.239(1), s.246 and s.286 CFRN 1999. Similarly, in the case of **Attorney General of Abia State v Attorney General of the Federation**⁹, the court declared unconstitutional, an act of the National Assembly as not under their legislative competence.

Again in the case of **Nnoli v Unth Management Board (1994) 10 SCNJ Page 71** here, it was stated that in drafting legislation the drafter should check and make sure that both the substantive and procedural ultra vires are avoided. The drafter therefore owns the responsibility to the instructor or legislator as the case may be to bring out the facts that the Enabling Act itself is Ultra vires the Constitution if any.

Using this doctrine research method, the following Acts were examined to analysed and to determine the quality of those legislations and their effectiveness to the society namely, Electoral Act 2022, Economic and Financial Crime Commission Act 2004, and Independent and Corrupt Practices And Other Related Offence Act 2000.

1.8 Chapter Analysis

The research work is segmented or divided into five (5) chapters, for clarity, easy reading/access and for effective understanding by the users. Each of the chapters is distinct from another and all encompass issues succinctly dealt with by the researcher.

Chapter One which is the introduction deals with the background to the study of the research work, the statement of the problem that the researcher has identified, and this is followed by the research question which the researcher has formulated to be answered in the course of the research work, followed by the aim and objectives of the study, the scope and limitation of the study, significance

⁹ (2002)3 SCNJ. Page 106

of the study, the methodology adopted by the researcher in carrying out this research work, the organizational layout of the research.

Chapter Two discusses conceptual clarification of terms, by defining some key terms used in the research work such as Legislation, Bills, Legislature, Legislative Drafter, National Assembly, Legislative Drafting, and Regulation. It further examines theoretical analysis and literature reviews used by the researcher in the course of this study.

Chapter Three focuses on legislative drafters and their responsibilities. Qualification of legislative drafters, drafting skills required by legislative drafters, grammatical terms and usage in drafting, legislative drafting office, importance of a drafting office, requirements of a drafting office, and the National Legislative Drafting Guide.

Chapter four discusses the effects of the non-regulatory of the legislative drafters in Nigeria. The chapter further discusses measures/ways of regulating legislative drafters and enhancing effective legislation in Nigeria: Enactment of an Act or Law regulating legislative drafters; Introduction of legislative drafter seal; and Attaching legislative drafters to the legislators in Nigeria as their senior legislative aides and to all legal departments of ministries and agencies of government, as their legislative drafters in charge of legislative drafting.

Chapter Five, which is the conclusion, contains the summary of findings, the observations made by the researcher in the course of the research work, recommendations, the contribution of this research work to knowledge and development, and finally the conclusion of the research.

CHAPTER TWO

CONCEPTUAL CLARIFICATION, THEORETICAL FRAMEWORK, AND LITERATURE REVIEW

2.0 Chapter Overview

The main focus of this study is to evaluate the need to regulate Legislative Drafters in Nigeria and in doing so, this chapter offers the clarifications of key concepts, the underlying theoretical framework, as well as the review of the literature. It specifically discusses important terminologies that are important to clarify in this study, the history and development of legislative drafting from the colonial to present time, and selected existing literature on the subject matter.

The objective and import of this chapter are that shedding light on the key concepts, offering an historical view of legislative drafting, and reviewing some existing studies, will lay the premise upon which the ensuing chapters will be discussed.

2.1 Conceptual Clarification and Definition of Terms

2.1.1 Legislation

Legislation in another or simple parlance is the law of a specific place or area in written form, using or following some formal procedure, by a branch of government constituted to perform this process. It is the whole body of enacted laws.¹⁰ Black's Law Dictionary¹¹ defines legislation as the process of making or enacting a positive law in written form according to a formal procedure by a branch of government constituted to perform this process. In Nigeria, legislation is a vital formidable source of law. In general, Nigerian legislation is divided into primary and secondary legislation. Primary law refers to laws made by a branch of government that has primary jurisdiction over law-making. For example, laws passed by the National Assembly are known as

¹⁰ B.A. Garner, Black's Law Dictionary (9th ed. Thomson Reuters, 2009)982

¹¹ Black's Law Dictionary (7th ed.) Minnesota: West Group, St.Paul 1999 at 910

Acts, the laws passed by the State Legislatures are known as Laws, and the Military Administration is known as Decree. All the Federal laws made by the federal government of Nigeria were published in a series of 24 volumes of documents in 1990¹². This was revised in 2004 in a 16-volume document containing all Acts and subsidiary legislations that were in force on 31st December 2002.¹³ This has significantly helped all those involved in the practice of law, especially judges, lawyers, and academicians to have an easy grasp of almost all the laws in Nigeria. On the State House of Assembly, each of the 36 states and the Federal Capital Territory (FCT) Abuja respectively, has its laws. Some states have in recent times made some changes in their laws and factored them in a compact and comprehensive form to facilitate easy access. Legislation has been described as the most important source of Nigerian law. This is partly because all other sources of Nigerian law are considered as such by a piece of legislation or the other. Again, Secondary legislation which is also known as Subsidiary legislation are those laws (legislations) made by a person/persons or body other than the ones elected to make law, under the authority granted by the legislature itself in an enabling Act/Law. It is also called delegated legislation or statutory instrument, which is made under a delegated authority. It could be in the form of, proclamations, regulations, rules, bye-laws, orders, notices, or other instruments made under a written law and having legislative effect.

2.1.2 Legislature

This is a branch of government responsible for making statutory laws. There are federal and state legislatures. The federal legislature has upper and lower legislatures, consisting of a House of Representatives and a Senate; also known as the National Assembly, the state legislature has only

¹² Laws of the Federation of Nigeria, 1990

¹³ Laws of the Federation of Nigeria, 2004

one legislature known as the State Legislative Assembly.¹⁴ Laws enacted by legislatures are often referred to as primary laws or Act. In addition, legislative bodies can observe and control the actions of the government and have the power to amend the budget in question. The members of the legislative body are called Legislators. In a democratic governance, legislators are usually elected by the people, but indirect elections and executive appointments are also used, particularly in the National Assembly. Nigeria's legislature is made up of two houses, the upper house which is known as the Senate, and the lower house known as the House of Representatives.

The 1999 constitution confers on the Legislatures(National Assembly and State House of Assembly enormous powers not limited to Law-making power¹⁵ but including oversight function¹⁶, power to appropriate money from the Consolidated Revenue Fund¹⁷, power to conduct an investigation,¹⁸ and so on

2.1.3 Legislative drafting

Drafting is a form of communication that conveys information in a permanent format. In drafting, the drafter communicates a message through a written text or document. Legal drafting encompasses legislative drafting, which is the process of translating policies and proposals into legislative language, forming a "Bill" that is ready for presentation to the legislative body for approval and enactment into "an Act," "a Law," "an Edict," "a Bye-law," or "a Decree," depending on the context. The scope of legislative drafting also includes subsidiary legislation, such as warrants, regulations, gazettes, notices, rules, and similar instruments. Legislative drafting is an institutionalized means of communication. The scope of legislative drafting is very wide, it covers

¹⁴ B.A. Garner, Black's Law Dictionary(9th ed. Thomson Reuters, 2009)983

¹⁵ Section 4(2) (3) and sections 58 and 59 of the 1999 Constitution

¹⁶ Section 62(1) of the 1999 Constitution

¹⁷ Section 81 of the 1999 Constitution

¹⁸ Section 88(1) of the 1999 Constitution

drafting Penal legislation, licensing and registration legislation, extra-territorial legislation (Treaties), retro- active and retrospective legislation as well as the principle of interpretation of statutes¹⁹. The legislative drafting process begins with the receipt of drafting instructions and ends with the completion of the draft. Legislative drafting is about principles, techniques, and approaches to the formation of legal norms from the methodological, structural, and linguistic aspects. Adherence to the rules on legislative drafting in everyday practice is of paramount importance as it ensures a high level of quality and clarity of the laws and regulations.²⁰

Legislative drafting is the skill of crafting legislation, which also includes secondary or subsidiary legislation such as administrative orders, notices, rules, warrants, and similar instruments. To ensure effective drafting, the legislative drafter typically follows five key stages. These stages are meant to be approached in a logical sequence, though the process is often complex and may require revisiting earlier steps before finalizing the draft. The stages of legal drafting are: receiving and comprehending instructions, analysing the drafting guidelines, structuring a draft plan, drafting the legislation, and conducting a thorough review.²¹

2.1.4 Bill

A bill is a proposal for a new law or a proposal to amend or alter an existing law. According to DT Adem²² Bill is defined in the context of legislation to mean “ the art of making laws” . Bill can be defined as the draft of a proposed law to be discussed by legislatures. A bill does not become law until it is approved by the legislature and, in most cases, the executive branch. Once the legislature has signed a bill, it is called an Act of the legislature or a Statute. Bills are introduced to the

¹⁹ Sylvester O. Imhanobe , Principles of Legal & Legislative Drafting in Nigeria page 184.

²⁰ P. Chibuikem, Legislative Drafting. <https://www.academia.edu/23497126/LEGISLATIVE_DRAFTING> accessed January, 15, 2024

²¹ Ibid.

²² DT Adem, Understanding Bills Publish by Lexis Nexis Ltd 2014 page 1

legislature and discussed, debated, and voted on. Before a Bill becomes law, it must go through the following process in either chamber of the National Assembly; Presentation and first reading; Second reading; Committee stage; Third Reading and Passage; and finally Assent by the President.²³

2.1.5 Regulation

Regulation in simple parlance means a principle governing action or procedure, it is a rule or directive made and maintained by an authority. It is the action or process of regulating or being regulated, controlling, managing or synchronization, supervising, overseeing, and monitoring an act. Regulations can be a prescription by the authority to control an organization or system to carry out its obligations. Various authorities may enact regulations to maintain order, protect public interests, ensure fair practices, and promote health, safety, and welfare within a society. Regulation according to Merriam–Webster Dictionary is a rule or order issued by an executive authority or regulatory agency of a government and having the force of law.

Regulations are created to address specific needs or issues within the society. This is crucial in drafting as it helps to maintain drafting stability, uniformity, and standards that ensure fair competition with other regions or countries. The regulation process ensures transparency and will allow the stakeholders to carry out their roles in line with the guidelines provided.

2.1.6 National Assembly

²³ J. Erurane, ‘Governance: steps of how bills become laws.’(2023) <<https://orderpaper.ng/2023/10/19/7-steps-of-how-bills-become-laws/>> accessed January 15, 2024b

The National Assembly of Nigeria is a body democratically elected by its people to represent the interests and affairs of the Federal Republic of Nigeria and its people, to make laws for Nigeria, and to hold the Nigerian government to account. The National Assembly is the highest legislative body in the Country, whose law-making powers are summarized in Chapter One, Section 4 of the 1999 Nigerian Constitution and created by Sections 47 to 49 of the 1999 Constitution provide, among other things that there shall be a National Assembly for the Federation, which shall consist of two chambers: the Senate and the House of Representatives²⁴. The Senate is one of the chambers of Nigeria's legislature in the National Assembly. The Senate is headed by the President of the Senate, who is assisted by the Vice President of the Senate. The Senate consists of one hundred and nine (109) members corresponding to the 109 Senate districts in the federation. Senate districts are evenly distributed across the 36 states. Each state has three senatorial districts while the Federal Capital Territory (FCT), Abuja, has only one senatorial district. The House of Representatives is the second chamber of Nigeria's legislature in the National Assembly. The House of Representatives is headed by the Speaker, who is assisted by the Deputy Speaker. There are three hundred and sixty (360) members in the House of Representatives, representing the 360 federal electoral districts into which the country is divided according to its population.²⁵

2.1.7 Legislative Drafter or Draftsperson

A legislative drafter is therefore a person, after appropriate training and experience, engaged essentially in drafting bills for the legislature at whatever level of government. The power of the legislature to make laws shall be exercised by bills passed and generally assented to by the Executive, this underscores the importance of bills.²⁶ In Nigeria, the office of legislative drafters

²⁴ Sec 4 Constitution of the Federal Republic of Nigeria, 1999

²⁵Sec 47-49 Constitution of the Federal Republic of Nigeria, 1999

²⁶ Sec.58 and 100 Constitution of the Federal Republic of Nigeria, 1999

developed as part of the colonial apparatus of administration, and the office of the Attorney-General under the Governor-General was responsible for drafting Bills. This arrangement was carried over into Post-Independent Nigeria through the years that Nigeria was under Military regime till today. The return of democratic government in since 1999 increased the demand for drafters; so the legislative drafters are employed in the Ministries of Justice, the National Assembly, and State Houses of Assembly as in-house drafters, therefore the Legislative Houses no longer depend solely on the Office of the Attorney-General to draft Bills.

The office of the legislative drafter gradually moved to a few private legal practitioners who now provide consultancy services to lawmakers and draft Bills, for the lawmaker to sponsor it as a Private Member Bill. These private legal practitioners, who practice as drafters, are the third drafter category in Nigeria.

In summary, the legislative drafter has witnessed several developments from the era of the monopoly of the Office of Attorney-General; now there are drafters in both public and private sectors in Nigeria which is a commendable development. In addition to developing a new crop of drafters, there is also the emergence of institutions engaged in training legislative drafters in Nigeria. For example, the National Institute for Legislative and Democratic Studies (NILDS) and the Nigeria Institute of Advanced Legal Studies (NIALS) both offer Post-graduate programme.

The core duty of the legislative drafter is to transform policies into law by way of drafting the Bill, in doing so the drafters were often advised to follow certain steps to ensure that they had received and understood the instructions. These steps include (i) gathering sufficient background information on the legislation to be drafted. Therefore, all relevant extracts of all documents relating to the proposed legislation should be made available to him to facilitate his understanding of the instructions; (ii) understanding the objective of the legislative proposal to present a good

bill without which it will not be possible to produce strong legislation; iii) considering how he would like to achieve the objectives of the legislative proposal and then decide whether he would like to create a new body responsible for implementing the legislation. What structure should this body have and what powers will be given to it? (iv) The drafter must be able to carry out adequate research to examine the possible consequences of the law and any problems related to the legislation.

2.2. History and Development of Legislative Drafting

Legislative drafting has its origins in English practice, which was commonly exported as part of the colonial legal system; remains heavily influenced by this practice, undoubtedly due to the wide range of experiences and traditions. Early, legislative drafting in England (from the 15th century) was largely undertaken by Judges and conveyancers; they brought to it the wordy and legalistic style they used in the deeds and court instruments of the time, a practice encouraged by payment by the length of the document. These features were accentuated from the 17th century when, in the struggles between the King and the Parliament, the judges cut down the generality of statutory language (which tended to favour the Crown) by strict construction. In response, Parliament sought the same objectives by specifying in detail, and repeating at length, the matters that would have been covered by rules drafted in broad terms.²⁷

By the 19th century, lay readers especially found the contents of most statutes unintelligible. Legislation generally suffered from poor arrangement and structure, an inconsistent and elaborate mode of expression, a dense and unhelpful format, and obscure language. Blocks of unbroken text contained lengthy sentences in which many matters were compressed (for a process of separate enactment was needed for each sentence); they were written in artificial and legalistic language.

²⁷ D. William, *Legislative Drafting: A New Approach*, (London: Butterworths. 1984)153

2.2.1 Colonial Developments

Drafting was often undertaken by law officers who had gained their training in English law, and who looked to English drafting practices. Some improvements in drafting occurred independently in colonial jurisdictions, although they were not usually followed in England. For example, the Indian Penal Code 1860, Indian Evidence Act 1872, Indian Contract Act 1872, Code of Civil Procedure, and Code of Criminal Procedure 1898, demonstrated that a complete body of common law could be reduced to lucidly written rules that were accessible to those without legal training. The drafters of that time also devised ways that enabled legal principles to be enunciated and, by the addition of explanatory material and examples, their application to be understood. Neither trend carried over into the 20th century.

2.2.2 19th Century Developments

The 19th century was one of the great legal changes; drafting was caught up in that process. A better style was deliberately developed to counter the shortcomings in legislation, which Jeremy Bentham trenchantly criticised in the early years of that century. It was facilitated by the gradual professionalization of the work, which began with the creation of the Office of Parliamentary Counsel, in the United Kingdom, in 1869.²⁸

In this period, there were four influential figures:

- a) George Coode, a barrister in private practice, undertook a major revision of the poor laws, which led to production of *On Legislative Expression* (1845 & 1852) (This is reprinted in E A Driedger, *The Composition of Legislation*, 1976).

²⁸ E.A. Driedger, *The Composition of Legislation; Legislative Forms and Precedents* 2nd ed. Ottawa: Dept. of justice. (1976)

- b) Sir Henry Thring (later Lord Thring), a barrister, drafted for the Home Office in 1861 and by whom the Office of Parliamentary Counsel was founded. He wrote *Practical Legislation*, 1877, 1902.
- c) Sir Mackenzie Chalmers, drafted major commercial statutes in the later part of the century, such as the Sale of Goods Act 1893, which were adopted widely outside the United Kingdom.
- d) Sir Courtenay Ilbert, also of Parliamentary Counsel, wrote *Legislative Methods and Forms*, in 1901.

All made significant contributions to a much-improved approach in common law drafting in the later 19th and early 20th centuries. Their writings and legislative drafts had considerable influence throughout the then-British Empire.

2.2.3 The 21st Century Legislative drafts

To counter these trends, it has been proposed that legislation should move away from the traditional styles. So, it has been urged, that greater prominence should be given to statements of principle, rather than a detailed elaboration of rules to regulate the legal relationships of those concerned with or affected by the legislative scheme.²⁹ There is little evidence that such a radical shift will be adopted. Two principal reasons are commonly given:³⁰

- (a) This approach may produce less detail in the legislation as to responsibilities of those affected, but in consequence:
 - (I) that detail might have to be settled by the courts or by Executive direction or decision;

²⁹ D. William, *Legislative Drafting: A New Approach*, (London: Butterworths, 1984).

³⁰ *Ibid.*

(II) this could lead to a reduction in the authority of the Legislature, which constitutionally and traditionally is the body expected to settle such matters.

(b) The costs and burdens to the user of unfamiliar methods of working with legislation are likely to outweigh any benefits of improved intelligibility from a greater use of statements of principle.

Instead, there is now a welcome trend to return to the principles put forward by Coode and Thring (pioneered by E A Driedger, *Composition of Legislation*, (2nd ed, 1976)). In particular, there have been serious efforts in some countries to:³¹

- (a) work out how those principles can once more be applied to the legislative circumstances and drafting requirements of today; and
- (b) eliminate those recent practices that have tended to defeat the aims behind those principles.

This is particularly evident in Australia, where the impact of a plain language movement upon drafting has been considerable. This was followed by a wider anxiety about the clarity of legal documents, especially those intended for direct use by members of the public. The most thorough examination of the matter to date is that of the Law Reform Commission of Victoria (*Report on Plain English and the Law* (1987)). As part of this exercise, the Commission prepared a *Manual for Legislative Drafters* which aims: to help people involved in legislative drafting to prepare Acts that communicate their message efficiently and effectively.³²

Proposals on this matter have not been limited to the composition of legislation. Others have been made concerning the organisation and formatting of legislation to enable the contents to be more

³¹ E.A. Driedger, *The Composition of Legislation; Legislative Forms and Precedents* 2nd ed. Ottawa: Dept. of justice (1976)

³² A. Russell, *Legislative Drafting and Forms* (4th ed.1938)

readily understood (Law Reform Commission of Victoria, Report on Access to the Law: The Structure and Format of Legislation (1990)).

The above history on the development of legislative draft is the initiatives that developed contemporary drafting techniques, which improve the legislative expression and the structure and presentation of legislation in all Countries including Nigeria.

2.2.4 Importance of Legislative Drafting

In the modern state, much social and institutional change must be made through written law. This is both a democratic expectation and a practical necessity, confirmed by the Constitution, particularly the Fundamental Freedoms provisions enshrined in Chapter IV of the 1999 Constitution of Nigeria. We can no longer look to courts or to customs to adjust the system to the fast-changing demands made upon it. Legislation today is central to the process of change, for example, in a move from one form of economic system to another or from one form of government to another such as the Electoral Act 2004. It is the vehicle by which countries respond to the increasing demands that arise from membership of the international order, as for example, the changes introduced through the WTO (World Trade Organisation) and international agreements on environmental protection.

Legislation and the institutions created under it are the principal instruments through which planned development is undertaken. Development calls for new legal institutions; these must be appropriate to the needs and circumstances of the society. This process is undoubtedly affected by the quality of the instruments and by the speed with which they are drawn up and put into effect. Success may be dependent upon:

- a) the quality of input from persons with specialised legal skills and knowledge.

- b) the excellence of the prior research into the legal and practical implications of the policy options.
- c) the satisfactory integration of the new legislative scheme with the overall legal system.

The task of legislation is to provide in a constantly changing environment a framework for settled legal relationships, to reduce the potential for conflict, as well as to establish effective machinery for resolving the disputes that inevitably arise. Success rests in part upon the quality of the legislation. That in turn depends upon the competence, skills, and expertise of those responsible for its preparation.

2.2.5 Types of Legislative Instruments

The power to make primary legislation is exercised by making legislative instruments following required procedures – a process that can be referred to as "enactment". That term may also be used to refer to the instrument itself, or even to a legal proposition contained in a single sentence in the instrument. Those instruments may be referred to collectively as "statutes", as well as "primary legislation".

The Constitution typically prescribes the basic features of the enactment process, referring to an individual instrument before enactment as a "Bill", and after it as an "Act". In federal systems, a different term may be used to refer to State instruments after enactment, to distinguish them from federal enactments (e.g. "Law"). In dependent territories, a different term may be used to refer to local instruments after enactment, to distinguish them from metropolitan enactments (e.g. "Ordinance"). In military regimes, a different term may be used to refer to instruments made by the Military Council after enactment (e.g. "Decree" or "Edict").

2.2. 6 Classification/kinds of Bills

The following kinds of Bills are frequently prepared for the following purposes:

- a) An Enabling Bill: This is a Bill with the principal purpose of conferring powers to do something which otherwise cannot be lawfully done or would otherwise be unlawful.
- b) An Amending Bill: This is a Bill with the principal purpose of making alterations to existing primary legislation.
- c) The Appropriation Bill: This is an annual Bill to state the amounts of public expenditure authorised for the following financial year, as determined by the heads of expenditure in the estimates approved by the legislature. A Supplementary Appropriation Bill may be called for if additional expenditure must be authorised each year.
- d) A Codifying Bill: This is a Bill to provide a comprehensive and coherent set of written rules for a major area of law.
- e) A Consolidation Bill: This is a Bill to gather into one statute existing written rules on a given matter, especially those rules that are scattered between an Act and several other Acts that amended it.
- f) A Government Bill: This is a Bill introduced into the National Assembly by the Executive (Executive Bill) on behalf of Government to give effect to Government policy on the subject of the Bill.
- g) A Private Member's Bill: This is a Bill introduced into the National Assembly by a member who is not a member of the Government on a matter of general importance though often of special interest to the member or to some group with which the member is concerned.
- h) A Public Bill: This is a Bill that is of importance to the community, though not necessarily applying to the entire jurisdiction; it may be introduced as a Government Bill or as a Private Member's Bill.

- i) A Private Bill: This is a Bill (sometimes required to be enacted by a special Parliamentary procedure) to make special rules for a particular locality or persons, or group of persons, at their request.
- j) A Validation Bill: This is a Bill the sole purpose of which is to declare valid some action, omission, or procedure that, as the law stood at the time, was invalid or legally defective and therefore, to rectify the legal consequences and so many other Bills not mentioned here.

2.3 Theoretical Framework

This research work examines George Coode's thesis. The thesis contained these premises:

Coode's theoretical framework applies or uses the components of legislative sentence. The component which is made up the legal subject, legal action, case and conditions. The overall aim of the legislation is to regulate relationships between legal persons (i.e. those recognised by law as capable of carrying legal rights) and, in doing so, "to secure some benefit to some person or class of persons". There are two alternative ways of securing benefits:³³

- a) confer an appropriate right, privilege, or power directly upon the person or class of persons that are to benefit; or
- b) impose an obligation or liability upon a different person or class, so that a corresponding benefit results, indirectly, in favour of the person or class that is to benefit.

Typically, a legislative sentence should provide specifically for one or other of these alternatives, but not both since express provision of one normally gives rise to the other by implication. But "no single sentence in a law can do anything else than one or both of these. Typically, a legislative

³³ Coode George, Legislative Expression (William Benning & Company; James Ridgway, 1982)15

sentence, as well as defining one of the necessary elements of the relationship between persons or classes by these means, should:

- a) prescribe the limits to the stated right, privilege, power, or duty and liability; and
- b) designate the circumstances in which it arises and the conditions under which it operates.

For example, where a court awards the custody of a child over the age of 14 years to any grandparent of the child, that grandparent is liable to maintain the child until the child reaches the age of 18 years or unless the child is in full-time employment. The rule confers a benefit upon certain children by imposing a liability on their grandparents. The sentence also determines when the liability arises and when it ceases, by stating the circumstances and conditions in which the rule operates.

On the principles of legislative syntax, to fulfil these general objectives, Coode made proposals concerning the components of legislative sentences and offered several other guidelines about the way sentences should be structured.

The components of every legislative sentence, Coode asserted that legislative sentences ought to have two core components, and may have two optional components:³⁴

i) The core components are:

a) A legal subject:

A rule in a sentence must be directed to a subject who can respond to it. So, the subject must be one recognised by the law as a person upon whom a right, privilege, or power can be conferred or an obligation or liability imposed. So, the person to whom the rule is directed is a legal subject.

³⁴ Ibid at 17

Grammatically, the legal subject takes the form of a noun, modified as required to add greater precision; it is typically made the grammatical subject of the sentence.

b) A legal action:

The legal action states what the legal subject may or may not, or must or must not, do, to confer the intended benefit. Grammatically, this takes the form of a verb, with an auxiliary verb that directs how the subject is to be affected: "shall" (or "shall not") or "may" (or "may not"). The verb too may be modified (e.g. by the addition of an adverb) to give greater precision. This constitutes the principal predicate in the sentence.

For example, the subject and the action (predicate) are highlighted in the following: A police officer [= subject] may arrest a person [=action/predicate] if the officer reasonably suspects that the person has committed an indictable offence.

ii. Optional components

If a legislative sentence contains only a subject and an action, it constitutes a universal rule. Legal rules, however, are usually intended to have effect in particular circumstances or when particular conditions arise. So, if the rule is not to have universal effect, one or both of the following must be added:

a) The case:

This prescribes the circumstances to which the rule is confined or in which the rule has its effect. Grammatically, this may take the form of a subordinate clause, beginning with "where" or "when" and having its subject and predicate.

(b) The condition:

This prescribes actions that, when performed, cause the legal rule to take effect or not take effect. Grammatically, this may take the form of a conditional subordinate clause, beginning with "if" or "unless" and having its subject and predicate.

For example, where a police officer has cause to suspect that a person is loitering with the intention of committing an offence in a public park [=case], the officer may request the person to leave the vicinity of the park, unless the person provides the officer with a reasonable explanation for his or her presence [=negative condition].

2.4 Literature Review

It is pertinent to note that reviewing the existing literature on the subject matter is imperative to situate the present work amongst the existing ones.

In Nigeria, the lingua franca is the English language whereby the majority of the country's populace neither speaks nor writes the lingua franca, thus drafting in the English language should be understood the same way as the language of the jurisdictions.

Austin is of the view that the ability to communicate depends on the ability to think. One is of the essence of the other, hence he concludes by stating that 'what is commonly called the technical part of the legislation, is incomparably more difficult than what may be styled the Ethical.'

succinctly put it's easier to conceive justly what would be useful law than to construct that same law that it may accomplish the design of the lawgiver or maker.³⁵

The preoccupation of a legislative drafter is 'how will this draft be interpreted?' Kennedy posits that 'Bill drafting must have accuracy of engineering, for it is Law engineering; it must have the detail and the consistency of architecture, for the law architecture.'³⁶

The important idea according to Stasky is to say what you mean accurately, cohesively, clearly, and economically. He further opined that Substance comes before Form, but the two run together, you start by determining the needs to be filled, look for specific answers, arrange the answer in a coherent plan, and express the results as clearly and as simply as the complexities of the plan allow. In conclusion, he submitted that 'Form is important to substance because ambiguity and confused expression tend to defeat the purpose of legislation.'³⁷

Thornton in his book states that it is pertinent for the drafter to know and never to forget that the draft once it becomes an Act, becomes an instrument subject to interpretation by various individuals and bodies such as lawyers, courts, international institutions, parliamentary committees, and so on. The drafts therefore need to be in excellent form and to achieve the excellence that is needed, the drafter must be equipped with certain necessary tools and learn certain techniques to be able to produce a draft legislation that will be generally acceptable by the parliament, National Assembly, the government and the society at large.³⁸

³⁵ M. Austin, *The preparation of legislation*, (London Sweet and Maxwell, 1975) 82.

³⁶ Kennedy, *Drafting Bills for the Minnesota Legislature*, (cover press Minnesota, 1946) 78.

³⁷ P.W. Stasky, *Legislative analysis and drafting*, (Bridge publication and publishing London 2nd edition, 1984) 162.

³⁸ G.C. Thornton, *Legislative drafting* London Butterworth (1970) 5

Crabbe summarised it thus;³⁹ to achieve this, the parliamentary counsel (legislative drafter) has to understand fully what is required to study the instructions well, analyse the proposal critically in terms of their practicability and the existing laws; fill in the gaps where necessary and Have good knowledge of existing legislation, common law or customary law. It can be rightly summarised that the drafter before understanding the task of preparing the draft legislation must acquire thorough knowledge of the constitutional law of the country; Have complete familiarity with the statute books of the Country; Be well versed in the precedents regarding the anatomy of financial, corporate or socio-economic legislation; Get acquainted with Interpretation Act; Give meticulous attention to details and a clear systematic approach to the problem at hand; Acquire an analytical mind which is very much essential to good drafting.

Hillary Onwe in his book, defines legislative drafting as the art of writing legislation, which includes subsidiary or secondary legislation; administrative orders, notices, rules, warrants and similar instruments.⁴⁰ He posits further that legislative drafting is both an art and a science. The legislative drafter, more like a design architect, must sketch out a plan for the proposed legislation carefully, to enable a formidable structure that can stand in the legal environment. The drafter should have a good working knowledge of the gamut of laws in the legal system. Good legislative drafting identifies the legal objectives of a proposed legislation and meets them fully.

Sedman and Apesekry⁴¹ are of the view that, on the surface, the task of drafting any legislation is as easy as ABC as we most times tend to underestimate the importance of drafting legislation concerning the adherence to the Rule of Law. The general perception of legislative drafting is that the writer should be concerned only with matters that relate to the writing style, grammar,

³⁹ V. Crabbe, *Legislative Drafting*, (Cavendish Publishing LTD, 1993)7

⁴⁰ Hillary Onwe, *Groundwork of Legislative Drafting* (SNAAP Press Limited, Enugu, 2009)1

⁴¹ A. Sedman, R. Seedman, and N. Apesekry, *The Legislative Drafting for Democratic Social Change, A Guidebook for Drafters*. Sabrah for publishing and translation, Egypt, 2005

vocabulary, correctness of language, and textual structure but as much as these elements are deemed important, their importance should not be placed above the content of the rule of law. There is a deep-rooted unity between form and content in the legislative drafting. It is therefore considered a superstition that the drafters have nothing to do with the content of the law, but merely with the form.

Thornton in his book on legislative drafting posits that legislature is a very essential tool in the progress of any democratic government- the reason being that the legislature provides for the maintenance of rules for peace, progress, and the good governance that every jurisdiction needs. He further describes Legislation as communication of a very special kind because it is the framework of society and determines social relations between the state and individuals and individuals inter se.⁴²

Re Castioni⁴³ noted that it is not enough to attain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible, to a degree of precision which a person reading in bad faith cannot misunderstand.

To Felicia, Section 1 of the Nigerian Constitution provides that the constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. What this means is that any law inconsistent with the Constitution is void to the extent of its inconsistency. The drafter must ensure that the draft is consistent with the provisions of the Constitution and that the draft does not legislate beyond the provisions of Chapter II of the Constitution which deals with fundamental objective and directive principles of state policy of the

⁴² G.C. Thornton, legislative drafting , (4th ed., Tottel publishing ltd, 2005)16

⁴³ Re castioni [1891] QB 167.

government.⁴⁴ He must also take care not to derogate from the provisions of Chapter iv of the Constitution which deals with fundamental human rights and also ensure the respect of the principle of legality and rule of law for the legislation to stand up to legislative scrutiny, challenges to its constitutionality or legitimacy of the legislation or its provisions.

Akintola in his book on practice and procedure in the legislature, writes that a legislative drafter in the National Assembly is an employee of the government, who needs to satisfy his employers that laid down standards are being adhered to. Such standards include the need for the bill to be practical and the need to fulfill social expectations. For him, the drafting process begins when the formal instructions are given by the sponsors of the legislative proposal to the legislative drafter and ends when he puts them in the usual form under our jurisdiction usually called bills before the legislative body called the National Assembly. Unlike other jurisdictions where the drafting process requires basic drafting skills, the legislative process in Nigeria is more related to constitutional law.⁴⁵

Constantine in his publication on Commonwealth Law Bulletin believes that legislative drafter not only needs to have an excellent knowledge of the fundamentals of English grammar, but he/she should also be aware of the special grammatical features of legal English. As a general rule, it is advisable to use the active voice in place of the passive voice. It is clearer if the actor of the sentence is known straight away. The active style is also less cumbersome and easier to read. Simplifying the law in such a way that ordinary people can understand it is not so necessary in

⁴⁴ F. Eimunjese, *The Art of Legislation* in E. Azinge and N. Udombana (ED): *drafting legislation in Nigeria; constitutional imperatives* (Lagos: NIALS, 2012) 226.

⁴⁵ A.J. Akintola, *Law Practice and Procedure of Legislature* (Learned publications ltd, 1999) 6

these cases because it is the use of language that is clear and conveys a message without unnecessary complexity that determines the firmness of the legislation.⁴⁶

To Dickson, the success of a draft is measured by being able to leave little or no room for ambiguity and doubts with the intelligent application of knowledge and experience. He refers to ambiguity as the biggest disease of language, there should be no room for ambiguity. The choice of words used in any draft could be easily misconstrued if not properly applied, so it is necessary to keep the grammar to a minimum. Using words that are archaic and long may confuse the reader, so in application of the words we should also refer to the beginning to think about who our audience is. The drafter not only needs to have an excellent knowledge of the fundamentals of English grammar but he/she should also be aware of the special grammatical features of legal English. As a general rule, it is advisable to use the active voice in place of the passive voice. It is clearer if the actor of the sentence is known straight away. The active style is also less cumbersome and easier to read.⁴⁷

In 1800 when Jean Portalis was commissioned to draft the French civil code, he said in his preliminary address that he had been struck by the view, so widespread, that, in the drafting of a civil code, a few very precise texts on each subject might suffice and that the great art lies in simplifying everything while foreseeing all. He added; simplifying everything is a process on which there must be agreement. Foreseeing all is a goal impossible to attain.⁴⁸

According to Sylvester Imhanobe in his book, the art of legislative writing is the process whereby a policy is put in a legal language called “Bill” ready for presentation to the legislative house for passage into an act or a law. In my own words, the Art of Legislative Drafting lies not only in the

⁴⁶ C Stefanou, Is legislative drafting a form of communication?, Commonwealth Law Bulletin, (2011)37:3, 407-416

⁴⁷ R. Dickerson, Fundamentals of Legal Drafting (Little Brown and Company, Boston 1986) 32

⁴⁸ P. Lochem and P. Westerman, Rules on Rule Making, special issue of *Legisprudence: International Journal for the Study of Legislation* (2010) (4)2

process of putting policies together to form a bill but also in being able to simplify such policies and make them as clear as possible to the common man.⁴⁹

Majambere states that in drafting any legislation, the draft person is under a duty to ensure that the rule is interpreted correctly; he must first understand what is expected of him and know who his audiences are. Therefore, his major duty lies in giving effect to the policy the sponsor of the law provides, this is often a difficult task which leaves room for uncertainty.⁵⁰

Ilbert, Sir Courtenay Peregrine,⁵¹ In his book on *The Mechanics of Law Making*, states that legislative drafter must have a sound knowledge of the law and its principles as a prerequisite which is only gotten from studying the law as a legal profession. Most jurisdictions would require that the draft person should be a lawyer, but it should be noted that not all lawyers must necessarily be legislative drafters. The drafter must have a sharp, critical, imaginative, open, and inquisitive mind able to go out of his comfort zone and ask questions before he begins his process and also to be able to understand the perspective of different consumers of the law. The drafter must be able to work under pressure, in a team and with little or no supervision; he must possess a high level of concentration and discipline. He must have a high level of analytical skills as being able to analyse issues is very crucial to drafting. Being able to handle confidential information as a drafter is very important. It shows maturity in dealing with confidential documents as care must be taken in handling such documents. To mention but a few pieces of literature on legislative drafting, the above literature on the subject matter of this research is of immense contribution to the work.

⁴⁹ S. Imhanobe, *Legal Drafting & Conveyancing*, (Sylvester Imhanobe Legal Research Ltd, 2nd ed. 2002)

⁵⁰ E. Majambere, Clarity, precision and unambiguity: aspects for effective legislative drafting, *Commonwealth Law Bulletin*, (2011) 37:(3) 417-426

⁵¹ Ilbert, sir Courtenay Peregrine, *The Mechanics of Law Making* (University of Colombia Press, New York, 1914)109

CHAPTER THREE

LEGISLATIVE DRAFTERS AND THEIR RESPONSIBILITIES

3.0 Chapter Overview

This chapter looks into the body known as Legislative Drafters, explains whom they are, and the relationship between them and legislative drafting. It further states their roles which single them out and the need for a guide in carrying out these duties as professional. The significance of this chapter is that understanding who the legislative drafters are, and their responsibilities, will enhance the subsequent discussion about the measures or ways of regulating them, which will enhance the effectiveness of legislation in Nigeria.

3.1 Legislative Drafting and Drafters

Legislative drafting is often used interchangeably with such general terms as legal drafting or legal writing. Much as this may not be entirely incorrect, Legal drafting or Legal writing refers, generically, to all aspects of the Solicitor's job, whilst legislative drafting as a kernel of the nut, specifically, has to do with those aspects of legal drafting or writing, involved in the preparation of proposed legislation, whether principal or subsidiary. Legislative drafting is essential in a democratic setup or governance as the most important function of the legislature is law-making. Drafting is the practice, technique, or skill used or applied in communicating legislative intentions to the reader. Legislative drafting is the art of writing legislation, which includes subsidiary or secondary legislation; administrative orders, notices, rules, warrants, and similar instruments.⁵² Legislation itself is vital to any given society because it safeguards the rights, privileges, and obligations of the governed. Therefore, a great deal of diligence must be exercised in drafting the

⁵² Hilary Onwe, in *Groundwork of Legislative Drafting* (SNAAP Press Limited, Enugu, 2009)1

enactment to reduce as much as possible the probable confusion and difficulties that may affect the future administration and interpretation of the Enactment.

A legislative drafter is a specialist in legislative drafting. A legislative drafter is therefore a person, after appropriate training and experience, engaged essentially in drafting bills for the legislature at whatever level of government. In whatever nomenclature is used, a legislative drafter is always a lawyer specialized in legal drafting with highly technical aspects of law. It is hard for a non-lawyer to function well as a legislative drafter because of the dexterity and immense practical legal experience and knowledge required to successfully compose a piece of proposed legislation. The power of the legislature to make laws shall be exercised by bills passed and generally assented to by the Executive.⁵³ In Nigeria, legislative drafters are employed in the Ministries of Justice, the National Assembly, and State Houses of Assembly though quite a few are in private legal practice.

Legislative drafting is both an art and a science. Legislative drafting, like a designer or architect, has to sketch out a plan for the proposed legislation carefully, to enable a formidable structure that can stand in the legal environment. The drafter should have a good working knowledge of the scope of laws in the legal system. A good legislative drafter identifies the legal objectives of a proposed legislation and meets them fully.⁵⁴ This can be achieved by accurately and clearly expressing necessary legal rights and obligations while ensuring that the draft complies with acceptable norms and relates harmoniously to the legal order. In drafting any legislation, the legislative drafter is under a duty to ensure that the rule is interpreted correctly. He must first understand what is expected of him and know who his audiences are. Therefore, his major duty

⁵³ Constitution of the Federal Republic of Nigeria, 1999(as amended) ss.58 and 100.

⁵⁴ E. Majamber, Clarity, precision and unambiguity: aspects for effective legislative drafting, Commonwealth Law Bulletin, (2011) (37:3)417-426

lies in giving effect to the policy the sponsor of the law provides, this is often a difficult task which leaves room for uncertainty.⁵⁵

3.2 Responsibilities of Drafters

The main role and responsibility of a legislative drafter starts with the drafting process - receives the drafting instruments from instructing officers or sponsors and ends when the draft Bill is completed and ready for presentation to the legislative house. The Responsibility for formulating policy for new legislation and deciding upon the institutional and administrative arrangements and financing is normally that of the relevant Ministries, not that of the draftsman; The draftsman translates policy into legislation, but cooperation is critical.⁵⁶

A legislative drafter's role and responsibilities in the drafting process are;

- a) Understanding the Drafting Instructions; understand the policy and proposals, by examining the instructions in detail. The drafter needs to fully understand the instructions and the background of the intended legislation.
- b) Analysing the Drafting Instructions received- This role is vital and performed by lawyers with extra training in the field of drafting as it involves analysing the implication of the instruction. In analysing the instruction, if there is anywhere the draft is confused, drafters will need to provide a specialized form of legal services to the client like holding conferences and consultations with the sponsors of the Bill before embarking on the drafting proper.

In analysing the instruction, the legislative drafter will research the legislative proposal; checking and ensuring that the drafted legislation;

⁵⁵ Ibid.

⁵⁶ G.C. Thornton, Legislative Drafting 4th ed., London: Butterworths. 1996)42.

- i. Is consistency with the Constitution, that the incoming legislation will not conflict with the Constitution or any existing law;
 - ii. Has legislative authority of that particular legislative body to enact the law.
 - iii. Is in conformity with the potential danger areas such as Chapter IV of the constitution;
 - iv. Practicability and effectiveness of the legislation;
 - v. Complies with fundamental legal principles of good drafting. For example, never use a short word where more elaborate terminology can be substituted;
 - vi. Complies with grammatical terms and usage in drafting such as syntax and expression;
 - vii. Complies with the legislative drafting Manual;
 - viii. Is simple, clear and unambiguous and
 - ix. When challenged in Court or before the legislatures debate it can withstand it and come out victoriously.
- c) Designing the outline – in designing the legislation, the legislative drafter having undergone further training in drafting should decide on the legislative plan or approach, work out the legislative scheme and requirements, and prepare the plan for the overall structure of the legislation. This plan most times starts with Preliminary, Principle, Substantive, Administrative, Miscellaneous and Final provisions
- d) Composition of the draft- draft the legislative text, revise and redraft following consultations.
- e) Scrutiny and testing- check each draft for accuracy, certainty, and consistency, and remove errors of substance and ambiguities of syntax and expression. The drafter should allow at least one or two other persons to check the draft.

- f) Managing- meet deadlines in the legislative timetable, monitor the progress of the Bill through the Legislature, draft amendments required as the Bill proceeds, check all versions of the printed text and prepare the enacted text for Assent and publication.

To ensure that these functions are carried out properly and accurately, there is need for regulation guiding the actor of these role to give a perfect job to the general public. Conversely, if there is no guide on the drafters, both those who do not have these know in drafting will do the drafting job and the resultant report will be ineffective legislations.

3.3. Qualification and Qualities of Legislative Drafters

For someone to be qualified as a legislative drafter, the requirement is a law degree and a postgraduate diploma or degree in legislative drafting. The basic subjects required are Constitutional law and legal drafting⁵⁷ The legislative drafter should have sound knowledge of Constitutional Law, Statutory law – Treaties (Making) Acts, Legislative Houses (Standing Orders, Rules, Powers & Privileges Act. Again, the rules of interpretation and procedural laws adopted by the courts as well as judicial decisions, the custom and usage having the force of laws in the jurisdiction.

Thus, the following are the qualifications required of legislative drafters;⁵⁸

- a) Post graduate degree in Legislative Drafting
- b) Law Degree
- c) Member of the Bar
- d) Any formal drafting training or apprenticeship programme
- e) Any special skills, such as linguistic capabilities or computer training.

⁵⁷ Sylvester O. Imhanobe , Principles of Legal & Legislative Drafting in Nigeria page 193

⁵⁸ J. Akintola, Law Practice and Procedure of Legislature, Learned Publishers Ltd,1999)32

The qualities required of a legislative drafter are:⁵⁹

- a) The qualities include possession of a good command of the English language.
- b) The draftsman should also be able to communicate effectively with precision and in simple, clear, and precise English language.
- c) He must be a good listener
- d) He must be patient, meticulous, analytically minded, critically minded, and research-driven.
- e) He must be familiar with the interrelationships of the various Departments of Government; and have a good knowledge of the political, sociological, psychological, and economic system/society of which he is drafting the law.
- f) He must develop interest and flare for the subject of legislative drafting and exhibit a high sense of tolerance, commitment, and dedication in the drafting process.
- g) He must be ready to carry out research and must know where and how to find the law.
- h) He must be a simple and humble person with a good spirit of team workmanship.
- i) He must be committed and fully devoted to his work as a legislative drafter.
- j) He must have the ability to work under pressure.
- k) Have a clear mind and mental capacity to draft laws.
- l) Ability to understand policy issues.
- m) He should be able to work with little supervision and exhibit a willingness to accept criticisms in good faith.
- n) Good time manager.

⁵⁹ Ibid.

3.4 Drafting Skills Required by Legislative Drafters

It has been said that efficiency in drafting comes not by mere mastery of the rules but by the exercise of a faculty of the mind which can be described as a skill or a natural gift. What is immediately clear is the fact that legislative drafting is not an easy task, and it takes years and decades of mastery of the profession and hours of concentrated intellectual labour to acquire a sound knowledge of drafting. Indeed, it is wrong to assume that the rules of good drafting are simply the rules of literacy composition, as applied to cases where precision of language is required, and that accordingly, anyone who is incompetent to draw in apt and precise terms a conveyance, a commercial contract, oral pleading, is competent to draw an Act of Parliament.⁶⁰

A legislative drafter must have a sound knowledge of the law and its principles as a prerequisite which is only gotten from studying the law as a legal profession. Most jurisdictions would require that the draft person should be a lawyer, but it should be noted that not all lawyers must necessarily be legislative drafters. The drafter must have additional studies in the law profession, be a sharp, critical, imaginative, open, and inquisitive mind able to go out of his comfort zone and ask questions before he begins his process, and also be able to understand the perspective of different consumers of the law.

Legislative skills are however not as simplified as one would think because we are challenged to possess and improve the basic skills. These basic skills are prerequisites for every legislative drafter and they include: -Simple communication skills, Organisational skills, Time management skills, and Language skills.

⁶⁰ Ilbert, sir Courtenay Peregrine, *The Mechanics of Law Making* (University of Colombia Press, 1914) 109

3.4.1 Communication Skills

Written communication is just as important as oral communication. Being able to carry your audience along without allowing them to get lost in between sentences is very crucial to the success of the legislation. David Oluwagbami developed three rules that govern good communication in his article,⁶¹ which are: 1) being clear in your mind about what you want to communicate, 2) delivering the message concisely, and 3) ensuring the message has been clearly and correctly understood. He stated that these rules are all related to clarity in which the core of drafting lies.

3.4.2 Organisational Skills:

The organisation of the chapters in a legal document is essential for the outcome of the document. Making sure the document is reader-friendly and logically organising the ideas, using white spaces and even a table of contents in the longer legislature can help the reader find his/her way around the text, long paragraphs can also be cut into sub-paragraphs. It is important to keep the text as simple and as concise as possible. Sentences need to be kept short. The first few words in a sentence determine readability; it is therefore advisable to avoid left-handed sentences (those that start with long phrases and preambles). Verbs should be used, not nominalisation (words ending in -tion, -ancy, -ment, etc). The latter makes the text heavy. For example, it is better to write “confirm” rather than “in conformity with” and “amend” rather than “make amendments to”. But these suggestions are subject to one person’s opinion. In all, he must be reminded that the key to a good draft is making sure the text of the legislation is as clear and precise as possible.

⁶¹ D. Oluwagbam, Effective Communication skills in Legislative Drafting; Fundamentals of Legislative Drafting, Nigerian institute of Advanced Legal Studies, 2012. Page 791

3.4.3 Research Skills

Knowing how to conduct research is an important skill every lawyer must acquire. This is important even in our day-to-day cases, court activities, or even our normal project writing but is often overlooked. It is one thing to know how to search the internet for sources to use for your work and it is another thing to be able to search the internet and other databases for proper materials in both primary and secondary sources. I have classified this under a skill because I feel that most times, some lawyers do not know how to conduct research; they know what they want but do not have the slightest clue how to go about finding those things over the internet. The legislative drafter must be able to engage in proper research to enable him to gain the necessary knowledge on the background of the bill he is trying to draft and familiarise himself with other similar legislation and also enable him to properly understand the instructions that have been given to him.

3.4.4 Time Management Skills

As a legislative drafter, being able to manage your time is very crucial to the drafting process. No matter how long a period is allocated to a certain person to draft the legislation- if proper management of time is not followed, the passing of that legislature can be delayed. Also, the drafter must be able to work under pressure not just under pressure but still with the same professionalism he would have applied had he not been under pressure.

3.4.5 Language skill:

The use of language is another essential skill a drafter must possess. A draft's success is measured by the ability to leave little or no room for ambiguity and doubts with the intelligent application of

knowledge and experience. Dickerson refers to ambiguity as the biggest disease of language⁶², and there should be no room for ambiguity. The choice of words used in any draft could be easily misconstrued if not properly applied, so it is necessary to keep the grammar to a minimum. Using words that are archaic and long may confuse the reader, so in application of the words we should also refer to the beginning to think about “who our audiences are”, The drafter not only needs to have an excellent knowledge of the fundamentals of English grammar, but he/she should also be aware of the special grammatical features of legal English. The general rule is that it is advisable to use the active voice instead of the passive voice. It is clearer if the actor of the sentence is known straight away. The active style is also less cumbersome and easier to read. Law should be simplified in a way that ordinary people can understand it is not so necessary in these cases because it is the use of language that is clear and conveys a message without unnecessary complexity that determines the firmness of the legislation.⁶³

3.5 Grammatical Terms and Usage in Drafting

The following notes are designed principally to provide a reminder, and reference source, about the terms commonly used in English grammar and their proper usage.

3.5.1 Some basic terms grammar: the rules and practices governing the use of language and the relation between words as they are used in speech and writing in a language.

a) syntax: the arrangement of words in sentences.

b) Sentence: a set of words, grammatically complete, expressing a statement of some kind. It always has a grammatical subject and a predicate. A legislative sentence always begins with a Capital letter and ends with a full stop.

⁶² R. Dickerson, *Fundamentals of Legal Drafting* (Little Brown and Company, Boston 1986) 32

⁶³ C. Stefanous, legislative drafting a form of communication?, *Commonwealth Law Bulletin*, (2011) 37 (3) 407-416

c) Subject: the person or thing about which the sentence makes a statement. It takes the form of a noun or pronoun, to which descriptive modifiers may be added.

d) Predicate: makes a statement about the subject (e.g. what the subject does, may or must do). It therefore contains a verb.

e) Noun: a word that names or identifies a person, place, concept, act or thing.

f) Pronoun: a single word that refers to a noun (often the subject or a person or thing) that has been earlier mentioned and is used as a substitute for it.

g) Modifier: a word, phrase or clause that limits the scope of the word, phrase, or clause to which it is attached.

h) Verb: a word or group of words that expresses the action or state of the subject.

I) Clause: a distinct part of a sentence that contains a subject and a predicate.

j) Phrase: a small group of words that functions as a unit but lacks either a subject or a verb or both.

3.6 Principles of Good Legislative Drafting

Sometimes, drafters are excoriated or criticized by judges, practitioners, and interest groups for failures of these kinds. However, there is a growing awareness that these faults may sometimes be unavoidable under the preparation procedures imposed upon drafters. A drafter may be under considerable pressure to prepare legislation that members of the Legislature concerned may consider fundamental to the policies of their party. The members would have made promises during electioneering campaigns and would not be easily deterred from seeking to introduce legislation on what they may regard as cardinal to their party's policies. No matter whatever may

be the drafter's opinion as to the constitutional position on legislative competence⁶⁴. The principal pressure on the drafter, however, seems to flow from late instructions, short deadlines, and sudden and quite elaborate policy changes. Another major cause of complaint concerns the style in which legislation is drafted. This is a recurring theme concerning all forms of legal writing.

Thus, some Principles of good Legislative Drafting are:⁶⁵

- 1) Never use one word where you can use a larger number of others to achieve the same meaning.
- 2) Never use a short word where more elaborate terminology can be substituted.
- 3) Never use a simple statement where the same proposition can be propounded that will culminate in the same connotation.
- 4) Never use direct language when the same proposition can be expounded in a convoluted and pretentious manner.
- 5) Add a modifier to practically each utilised expression, if you can.
- 6) A proposition is clearer if it can be repeated; for it is easier to understand when stated again.
- 7) Never use English where a Latin phrase can be used *mutatis mutandis*.
- 8) Use archaic phrases whenever and whenever possible to ensure that the aforesaid phrases shall duly bear witness to the efficacy of styles used hitherto.
- 9) In every sentence, use punctuation, (as, for example, commas, and, also, brackets), and Capital Letters, at every, possible Opportunity and so on.

⁶⁴ Ibid

⁶⁵ S.A. Olusiji, *Elements of Legal Drafting*, (Dredew Publishers, 1997)19

3.7 Legislative Drafting Office

Law-making is the heart of a nation's democracy. It represents the expression and reflection of a Country's understanding and acceptance of democracy. Where a nation is governed by laws, it can be assumed that the laws are held in high esteem, being the fabric that holds the State together. It follows that those who prepare the laws (just like those who debate them) must be given the necessary tools to work with and the requisite comfort.⁶⁶

3.7.1 Importance of a Drafting Office

Just like the importance attached to a legislative chamber where members of the legislative house debate and pass Bills, the office of the legislative drafter and counsel is also of immense importance. The office of the legislative drafter must be separate and distinct and adequately equipped with the required facilities. An expanded federation like Nigeria with 36 States, each with its legislative house and bicameral legislative chambers for the federal government, requires many drafters and legislative counsel.⁶⁷

Except deliberate efforts are made to retain the services of existing drafters and to attract new ones into the fold, the legislative houses may suffer shortages of experienced and competent drafters. The implication and consequential effects of such shortages can be rather imagined. The few available may find themselves overworked with adverse consequential effects on their performance and the quality of legislation to be found in our statute books.

⁶⁶ J.A. Akintola, *Law Practice and Procedure of Legislature* (Learned Publishers Ltd, 1999)39

⁶⁷ Owasanoye Bolaji, *Requirements of a Drafting Office in Training Manual for Postgraduate Programme in Legislative Drafting* NIALS Unilag Lagos.

Apart from the attendant confusion, bad drafting may open the floodgate of litigation. Legislation that is badly drafted will leave the people it is to administer with an avalanche of troubles and litanies of woes.

3.7.2 Requirements of a Drafting Office

It is pertinent to state that a poor working environment can impair job satisfaction and lead to the rapid depletion of personnel. In a democratic set-up with separation of powers, drafting service is provided at two levels viz: the legislative and the executive levels. This is because the legislature can introduce bills on their own through a sponsored member's bill or one that comes from the executive. This process applies at all three levels of government i.e. Federal (National Assembly), State (House of Assembly), and Local government (Legislative Council).⁶⁸

The need of each State for drafting services at two levels (State House of Assembly level and State Ministry of Justice level) could be stressful on the little skilled manpower available within the country. Since law or legislation constitutes the hub of the nation, little need be said of the importance of infrastructures, which must be put in place to create the enabling environment to facilitate the drafters' inefficient performance of their work.

Apart from providing adequate facilities and very good working conditions for the drafter, a good drafting office must satisfy many requirements.⁶⁹

1) Personnel: This can be divided into two.

a. Legal Personnel – these are the core experienced drafters and a group of understudies.

⁶⁸ J.A. Akintola, Law Practice and Procedure of Legislature (Learned Publishers Ltd, 1999)41

⁶⁹ Ibid

b. Clerical Personnel – these should be efficient and able to cope with overtime work without disrupting the regular office schedule.

2) The Office: A good office allows for concentration which is vital in the drafting process. Each drafter ought to have privacy and freedom from interruptions. The entire physical infrastructure that goes with an office must also be provided. The furniture must be standard and the cooling system adequate and efficient.

3) Conference Room: This is necessary for regular meetings of drafters. Drafting offices normally consist of a reasonably large team of usually not less than twenty lawyers. Therefore, it is normal to have a conference room where the drafters and legislative counsel can hold conferences, seminars, and meetings which are sometimes necessary for the efficient performance of their job.

4) Information Technology: A drafting office must be equipped with modern technological facilities. Each drafter must be computer literate and have a computer to work with. The office should be automated with modern telecommunication facilities such as a digital telephone and Internet, e-mail facilities, photocopying machine, etc.

5) Well-Trained Supporting Staff: These include secretaries, clerks, office assistants, editors, etc. The staff strength depends on the size of the office and the volume of work. Staff members are employed, either as employees of the public service on a contractual basis; full-time; part-time; or secondment.

6) Library: A good library is an essential aid to the drafter. The drafting office must have a well-stocked library. A large collection of precedent books including standard precedents from other jurisdictions should be provided on the shelves. Texts on legislative drafting should form part of the collection. The drafters must have direct access to all laws of the Country both Federal and State laws to enable them to work efficiently. The library must have law reports, journals,

periodicals, and standard legal and legislative dictionaries. The library must be fully computerized so that the drafters from their different offices can access the library through their computers.

3.7.3 Organising a Drafting Office

The majority of drafting offices worldwide are attached to the various legislatures or Ministry of Justices as the case may be, Canada and Nigeria are good examples of this. However, in countries like the United States of America and the United Kingdom, the office (of the parliamentary counsel) is independent. Where the office is attached to the Parliament and Ministry or Department of Justice, like the case of the Manitoba Drafting Office in Canada, drafters of the office draft both government (executive) and private members' bills. In Nigeria, the Drafting department attached to the Federal Ministry of Justice is only responsible for drafting government bills. Similarly, the Drafting departments attached to the various States' Ministry of Justice only handle government bills.⁷⁰

Also, the Legal Services Department of the National Assembly assists in amending government bills. It is also responsible for putting the finishing touches to government bills for onward transmission to the President for his assent. The Department equally drafts Members' bills and private members' bills. Similarly, at the State level, the Legal department attached to the various States' House of Assembly is responsible for drafting Members' Bills and Private members' Bills. They also put the finishing touches to government bills for onward transmission to the Governor for his assent.

⁷⁰ Owasanoye Bolaji, Requirements of a Drafting Office in Training Manual for Postgraduate Programme in Legislative Drafting NIALS Unilag Lagos.

3.7.4 Reporting Structure:⁷¹

In some legislative drafting offices, the Chief Legislative Counsel is the head. He supervises the staff and reports to the Assistant Deputy Attorney General (Legal Services branch) administrative and the Deputy Attorney General on the legislative programme (Canadian reporting structure).

In Nigeria, the drafting offices attached to the Federal Ministry of Justice and the States' Ministry of Justice are headed by Directors. They report to the Permanent Secretary and Solicitor-General of the Federation (at the federal level) or the Permanent Secretary (at the state level).

Also, the Drafting offices (Departments) attached to the National Assembly or State Houses of Assembly are headed by Directors. They report to the Clerk of the National Assembly or of the State House of Assembly as the case may be.

Reporting Structure Federal/State Ministry of Justice:

Solicitor-General of the Federation/Permanent Secretary

↑

Director Legal Drafting Department

↑

⁷¹ Ibid.

Drafting Office.

Reporting Structure National Assembly/State Houses of Assembly:

Clerk of National Assembly/State House of Assembly

↑

Director Legal Services Department

↑

Drafting Office

3.8 Strengthening Legislative Drafting Practice

There can hardly be a reasoned, rational legislative output in terms of enactments, without a competent knowledgeable, and clear-headed team or office of legislative drafters. It is to be understood that so much goes into the making of legislation. The unseen hands of the legislative drafters, most arduously, chisel out statutes from a bush of proposals. This, by any means, is not a child's play, as any piece of intelligible, compact codes of law would have cost some pounds of brains.⁷²

Legislative drafting is not an entirely academic affair neither is it entirely a 'chisel and hammer' business. It is an enterprise that requires both good academic standing and some creative ingenuity.

⁷² Hilary Onwe, *Groundwork of Legislative Drafting* (SNAAP Press Limited, Enugu, 2009)27

Legislative drafting, like any other design effort, has some inspirational basis. Any great legislative drafter, as a musical artist or composer, would affirm that inspiration for naughty drafting solutions comes either in dreams or relaxed moods during leisure activities.

The quality of legislative instruments in a jurisdiction is only a reflection of the quality of legislative drafters available in that jurisdiction. When for instance, we hear of harmony and accord in the workings and application of statutes in the United Kingdom, it is only a reflection of an efficient, inspired, well-trained Office of the Parliamentary Counsel, properly trained, insulated from partisan politics, which is focused on nothing but legislative clarity. In the United States and Canada, the story is not different, there is clarity and harmony in the regime of statutes, owing to well-laid-out drafting offices with experienced, knowledgeable, and motivated legislative drafters.

The ways of strengthening legislative drafting practice in Nigeria are:⁷³

The second step should be to embark on accelerated capacity building of the available legislative drafters. Most of the Legal or Legislative drafters in the Ministries and Legislative Houses are evidently poorly trained, miserably equipped, and ill-motivated. This explains the apparent lack of zeal and non-commitment to effective drafting by the Legislative drafters. The picture will be clearer for anyone who had to observe our publicly employed legislative drafters alongside legislative drafters from even other African countries, such as Somalia, Ghana, South Africa, or Gabon, not to talk of the United Kingdom, USA, or Canada, at international conferences. Legislative drafters are usually well-composed, high-flying legal professionals, remunerated almost at the benchmark of high Court Judges.

⁷³ Ibid

The very senior practitioners, some of whom have made a name in the profession; Senior Advocates of Nigeria, Professors of law, etc., are usually favoured in legislative drafting assignments. Most times, they know next to nothing about legislative drafting. They pick the briefs and give them to their juniors, who copy precedent books and lift foreign statutes without adaptations to make updrafts. This in my estimation, is a profound tragedy to the Nigerian Legal System. This is frequently the reason for some bizarre provisions in our statute books. A situation where foreign provisions are transposed without modifications into our statutes can explain the mix-ups and non-practicable provisions that occupy spaces in our body of laws.

Lawyers who are trained, experienced, and internationally exposed to legislative drafting are highly treasured assets anywhere in the world and are indeed in short supply. It is easily recognised that it is a higher and harder task to prepare a piece of legislation whose provisions are clear, precise, unambiguous, and sitting in harmony with any other provisions in any other legislation in the jurisdiction, than the interpretation and application of provisions in statutes to a given set of facts, which judges do. No wonder, good legislative drafters are high-standing national personalities, and often, recipients of national awards, in civilised jurisdictions. Nigeria should seek out these 'treasures', and engage and motivate them to assist in preparing our laws, this is the panacea for improved quality in legislative instruments in Nigeria.

CHAPTER FOUR.

MEASURES/WAYS OF REGULATING LEGISLATIVE DRAFTERS AND ENHANCING EFFECTIVE LEGISLATION IN NIGERIA.

4.0 Chapter Overview

In this chapter, what effective legislation is all about, the causes of ineffective legislation, and the ways of regulating the Legislative drafters to ensure that effective legislations are produced are discussed. Also, various Acts that the researcher observed ineffective because of the poor drafting were equally discussed here. The rationale for these discussions is that they offer the basis upon which the argument for the need for regulating the body of legislative drafters is presented.

4.1 What is Effective Legislation?

Effective legislation can refer to legislation or laws that achieve the desired result, or intended purpose, addressing societal issues or regulating actions in a manner that is clear, enforceable, and beneficial to the general public. Something is considered effective if it has produced the intended result or accomplishes a specific goal. For legislation to achieve the goal of effectiveness, it must contain the drafting key principles that ensure clear, concise, and effective written communication, namely:

1. **Clear:** The drafter should ensure the use of the law's simple, clear, and precise language.

Those affected by that legislation should understand their rights and obligations. Drafters

should leave little room for interpretation or confusion and define some terms where necessary.

2. **Enforceability:** The law drafted should be practically enforceable. This means there should be mechanisms provided for monitoring compliance and penalizing non-compliance. For criminal legislation, there must be an offence and penalty or punishment clause for the offence. This was a reverse in the EFCC
3. **Relevance and Necessity:** The legislation should address a real and significant issue. It should be based on a thorough understanding of the problem it aims to solve and be necessary for the public good.
4. **Fairness and Equity:** Effective legislation should be fair and equitable, treating all individuals and groups justly. It should avoid discrimination and ensure that all affected parties have the opportunity to comply.
5. **Feasibility:** The law should be practical and feasible to implement, considering the resources available for its enforcement and the capacity of those who need to comply.
6. **Flexibility:** Effective legislation should be adaptable to changing circumstances. It should include regular review and revision provisions to remain relevant and effective overtime.
7. **Public Support and Participation:** Successful laws often involve input from stakeholders and the public during the drafting process, ensuring that the legislation has broad support and is more likely to be accepted and adhered to.
8. **Consistency with Other Laws:** To avoid conflicts and confusion, the legislation should be consistent with existing laws and regulations. It should also align with broader legal principles and the Constitution. An example is where the court annulled the provision of section 140(2) of the Electoral Act 2010 due to its unconstitutionality and incompatibility with the CFRN 1999 in the case of **Labour Party v INEC & Attorney General of the**

Federation⁷⁴. The said section 140(2) of the Electoral Act 2010 is incompatibility with the Constitution of the Federal Republic of Nigeria concerning the powers of the court or tribunal as contained in s.4(8), s.6(1) and (2), s.6(6)(a) and(b), s.239(1), s.246 and s.286 CFRN 1999

4.1.1 Cause of Ineffective Legislation in Nigeria

Taking the major effect of non-regulation of legislative drafter as ineffective legislation, we can now look at other causes of ineffective legislation. A systematised developed approach or framework for legislative drafting is necessary to produce quality Bills or legislation which in turn contributes to the overall national development of any democracy. Conversely, an unorganised or unsystematic approach to legislative drafting is often identified as one of the major reasons for poor quality legislation in Nigeria and other transitional and developing countries as is established.

In Nigeria, since the inception of our nascent democracy in the year, 1999, there has not been efficient legislation that curbs corruption and promotes the national economic development of Nigeria. Evidence of the above fact is the corrupt, economic and financial Acts in Nigeria that have failed to stop corruption in Nigeria. Again, one recent study of the Nigerian National Assembly by the National Institute for Legislative Studies, National Assembly (NILS) titled '14 Years of Law Making in Nigeria National Assembly, 1999-2013: An Analysis of the Bills Processed' reveals that too many Bills are proposed in the National Assembly leaving many of them abandoned at the end of every legislative session- this is legislative inflation⁷⁵.

According to NILS :

⁷⁴ The Nation Newspaper Vol 6 No 1807 July 1, 2011 page 4

⁷⁵ Sylvester Imhanobe Principles of Legal & Legislative Drafting in Nigeria (Abuja : Imhanobe Law Books Limited, 2014, page 239

There are concerns that all kinds of proposals are submitted as bills because of the desire of legislators to be listed as having sponsored bill. Such bills are said not to have much research foundation. There is the perception that over 50 percent of the bills received could be improved significantly and that, on this score, former President Chief Olusegun Obasanjo, withheld assent on many bills⁷⁶.

i. The major root cause of Ineffective legislation in Nigeria is the absence of Professionals in the field of legislative drafting who are known as Legislative Drafters. These Professionals having undergone extra training in legislative drafting have known what and what should be avoided so that legislation will not be ineffective after the passage. On the other hand, even when the legislative drafters take over the duty of drafting, there are no rules guiding the conduct and characters of the drafters, and no penalty attached to bad, poor or ineffective legislation.

ii. Lack of thorough scrutiny of the Bills by the legislative drafters, to prevent the allegation of mischievous and fraudulent insertion of “new” clauses by legislators or staff of the legal departments of the National Assembly when they are assigned to “clean up” a Bill before the stage of third reading and final passage of the Bill. This illegal practice of adding or removing some clause or word which is often commonly practiced regarding Appropriation (Budget) Bills/Legislation has new notoriety in Nigeria and led to the coinage of a new phrase and addition to the Nigerian legislative lexicon as the “budget padding” phenomenon.⁷⁷ For example, in February 2018, it was alleged that there was a “fraudulent” insertion of a 0.5% tax on companies as a source of funding the operations of the proposed Federal Competition and Consumer Protection Commission, which was undergoing enactment at the National Assembly as the Federal

⁷⁶ National Institute of Legislative Studies, National Assembly, (NILS) titled '14 Years of Law Making in Nigeria National Assembly, 1999-2013

⁷⁷ Ibid.

Competition and Consumer Protection Bill, 2017. It was alleged this 0.5% tax was not contained in the original version of the said Bill, nor was it mentioned during the debates and public hearing (consultations) stages of the legislative process, it only appeared in the final version of the Bill that was submitted to the President for assent. However, in actual practice, the Clerk of the National Assembly as a matter of tradition delegates this responsibility to the Legal Services Directorate of the National Assembly which is established by Section 14 of the National Assembly Service Act 2014.⁷⁸ Ideally, the general rule of law is that a legislative drafter cannot and is not at liberty to change the substance of a Bill or legislation on his own volition but must draft to reflect only the express instructions, and intentions of the legislators or whosoever is instructing the drafter intending to translate policy into legislation. The duty of loyalty and confidentiality to legislators and the officials providing drafting instructions are core ethical and professional responsibilities of legislative drafters which every drafter is under.⁷⁹ Furthermore, after the Public Hearing and after the Committee Report of a Bill (which is before the third and final reading stage of the legislative process), no new item ought not to be included in a Bill. However, in actual legislative drafting practice in Nigeria, a former Nigerian senator and lawyer has alleged that: "There is the common practice that after bills may have been passed by the Senate and the House of Representatives, the legal department now re-drafts the bills, perhaps, changing certain words to give them a presentation in a legal drafter's perfect legislative draft. This, in my view, is inconsistent with the provisions of the law."⁸⁰

iii. Insufficient Control Measures: Unlike advanced democracies such as the U.S.A, Britain, Canada, and Nigeria lack robust control measures to monitor and regulate legislative drafters.

⁷⁸ C. Stefanou, Ethics and Legislative Drafting in C.Stefanou and H. Xanthaki (eds.) Manual in Legislative Drafting (London: IALS & Department of International Development, 2005)6 & 7

⁷⁹ Ibid.

⁸⁰ <<https://www.vanguardngr.com/2016/08/budget-padding-occurs-ita-enang/>> accessed February 27, 2024.

Mandatory requirements for drafting guide, publication, consultation, and laying of legislation before the legislature are essential for effective oversight of legislative drafters. Due to lack of control measures, some legislative drafters will not carry out the proper research and will draft legislation that is inconsistent with the existing Laws. Certain Bills and legislations do not conform to the provisions of the 1999 Nigerian Constitution. Meanwhile, Section 1 (3) of the 1999 Nigerian Constitution expressly stipulates that the wording of every Bill or legislation must be consistent with the provisions of the 1999 Nigerian Constitution (failing which such Bills and legislation are deemed illegal and void to the extent of such inconsistency), this study has found that some Bills and legislation, fail this basic constitutional requirement. It implies that either the legislative drafters or the legislators themselves and even the President whose responsibility it is to provide assent to legislation, do not undertake adequate scrutiny to ensure this very important constitutional test. For example, Section 3 (1) of the Treaties (Making Procedure, etc.) Act, 1993 provides for the classification of treaties and states that a certain category of treaties does not require the National Assembly to ratify and enact them. This provision is in direct conflict with the provisions of section 12 of the 1999 Nigerian Constitution. Sections 5 of the National Human Rights Commission (Amendment) Act, 2010, which contains self-executing provisions of treaties by reference, are contrary to the provisions for direct enactment of treaties by the National Assembly as a prerequisite before their application within Nigeria as stipulated under section 12 (1) of the 1999 Nigerian Constitution.

4.2 Analyses of Some Acts that Could Not Achieve Their Purpose of Enactment

4.2.1 Economic and Financial Crime Commission Act, 2004

The Economic and Financial Crimes Commission (EFCC) Act of 2004 is a crucial piece of legislation in Nigeria aimed at combating economic and financial crimes in the country. It

empowers the EFCC to investigate, prosecute, and prevent offences such as money laundering, fraud, corruption, and cybercrime. The Act grants the EFCC substantial powers to seize assets, freeze accounts, and prosecute offenders, fostering a more robust and comprehensive approach to tackling financial crimes. It also enables the EFCC to collaborate with other law enforcement agencies and international organisations to address transnational crimes effectively. The EFCC Act of 2004 plays a crucial role in Nigeria's efforts to combat economic and financial crimes, providing a legal framework and empowering the commission to take decisive action against offenders.⁸¹

The reasons why the EFCC Act 2004 could not achieve the purpose it was enacted are: numerous cases of political interference in the activities of the EFCC, the lack of adequate funding for the activities of the commission and the EFCC's plea bargaining regime, the 2004 Act principally failed to check corruption and by extension has failed as a development Act because it was not drafted effectively and cannot be implemented for development. While the EFCC Act 2004, plays a critical role in combating economic and financial crimes, it faces several challenges that impact its effectiveness.⁸²

i. Political Interference: The EFCC has encountered numerous cases of political interference in its activities. This interference can hinder investigations and compromise the agency's independence. Section 2 (3) of the EFCC Act 2004, gives the Politicians power to determine who will be the Chairman and Members of the Commission which indirectly affect the performance of the Commission.

⁸¹ Ibe-Ojiludu Somadina, *The Law and Development Review* (2018) 11 (1) 127-171

⁸² M. Atoyebi, *Assessing The Implementation And Impact Of Anti-Corruption Laws In Nigeria*.
<<https://lawpavilion.com/blog/assessing-the-implementation-and-impact-of-anti-corruption-laws-in-nigeria/>>
accessed February 25, 2024.

ii. Inadequate Funding: Insufficient funding affects the EFCC's capacity to carry out its mandate effectively. Adequate resources are essential for investigations, prosecutions, and overall operations. Section 35 (2) of the EFCC Act 2004, states that the Federal Government shall fund the Commission every year. In other words, if the commission fund is exhausted before the end of the year and there is an investigation to carry out, it will be stalled for lack of funds and the offender will go free.

iii. Plea Bargaining Regime: The EFCC Act makes provision for plea bargaining and it states thus:

Section 14: (1) A person who, being an officer of a bank or other financial institution or designated non-financial institution - (a) fails or neglects to secure compliance with the provisions of this Act; or (b) fails or neglects to secure the authenticity of any statement submitted pursuant to the provisions of this act, commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine of Five Hundred Thousand Naira (N500,000) or to both such imprisonment and fine.

(2) Subject to the provision of Section 174 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any persons in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence.

Striking a balance between leniency and accountability is crucial. This may not effectively deter corruption and financial crimes and has killed the purpose of the Act as it was enacted to deter the offenders. This has totally encourage corruption and people will engage on it and will to forfeit some part of the proceeds when caught.

iv. Drafting and Implementation: The 2004 Act has not been effectively drafted and cannot be implemented for development. To effectively combat corruption, legislation must align with development goals and address systemic issues.

V. The Act makes provision for Bureaucratic Red Tape. Complex and cumbersome bureaucratic procedures can slow investigations and prosecutions, leading to delays and a lack of timely justice.

4.2.2 INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC) ACT, 2000.

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) Act of 2000 is a significant legislation to combat corruption in Nigeria. This law empowers the ICPC, a specialised anti-corruption agency, to investigate and prosecute corruption-related offenses within the public and private sectors.

The Act establishes the legal framework for the ICPC's operations, granting it extensive powers to arrest, seize assets, and prosecute offenders. It also outlines various corrupt practices, including bribery, embezzlement, and abuse of office, among others. The ICPC Act provides for stringent penalties upon conviction, including fines and imprisonment, to deter potential wrongdoers.⁸³

The ICPC Act's ineffectiveness is exhibited in section 43(1) of the Act which states that in any proceedings against any person for an offence under sections 13 to 23 of the Act and it is proved that any gratification has been accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised or offered by the accused person, the gratification shall be presumed to have been corruptly accepted or obtained by the accused until the contrary is proven. The provision of section 43(1) is contrary to section 36(5) of the 1999 Constitution (as altered) which clearly states that every person who is charged with a criminal offence shall be presumed innocent until he is proven guilty. Once legislation or provision of

⁸³ D.U. Enweremadu, The struggle against Corruption in Nigeria: The Role of the National Anti-Corruption Commission (ICPC) under the Fourth Republic. <<https://books.openedition.org/ifra/916>> accessed February 25, 2024.

legislation conflicts with the provision of the supreme law of the land, that legislation is automatically invalid and ineffective because it will not achieve the purpose for which it was enacted.

4.2.3 Electoral Act, 2022

The Nigeria Government enacted Electoral Act 2010 and 2022, to curb the menace of the electoral process introducing new changes. The Electoral Act 2010, the provision of section 134(3) conflicts with the provision of section 285 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) as it concerns the proper time and court to bring pre-election cases. The Constitution, being supreme to the Electoral Act, has rendered the provision of section 134(3) of the Act ineffective draft. This is the position of the law in the case of *ATIKU ABUBAKAR & ANOR V INEC & ANOR*.⁸⁴ The Electoral Act 2022 has some challenges that make some provisions of the Act ineffective, hence it couldn't achieve the purpose for which it was enacted. Some of those provisions that created problems in the 2023 general election are:

- a) that only aspirants who took part in a primary election can institute action against candidates who submit false information to INEC. This contrasts with the repealed Act, which allows any member of the public to challenge false information.⁸⁵
- b) the exclusion of political appointees from acting as voting delegates seems like a derogation of the right of individuals to exercise their voting franchise at a party convention.
- c) the section that mandates Policemen to always provide adequate protection for political rallies, to be supported by the Nigerian Civil Defence Corps. The Police are given the power to resolve any conflict of time and venue between and amongst parties where such arises in a consultative

⁸⁴ LER(2019)CA/PEPE/002/2019.

⁸⁵ Ibid.

manner and not by imposition.⁸⁶ However, this provision is immediately contradicted when the Act declares that Political parties and their candidates do not need a police permit to organise political rallies, notwithstanding any provision of the Police Act. In the Public Order Act or any other law, the role of the Police and Civil Defence Corps is limited to the provision of adequate security only and not for members of the public to seek permission from them to organise political rallies or any other rally for that matter. This provision is consistent with the decisions of Superior courts in Nigeria that citizens do not need the permission of the police to organise rallies.

4.3 Ways of Regulating Legislative Drafters in Nigeria

4.3.1 Enactment of an Act to Regulate Legislative Drafters

The enactment of an Act to regulate legislative drafters is a significant step in ensuring the quality and effectiveness of legislation. In Nigeria, legislative drafting plays a crucial role in the legal system, and having a set of standards and regulations for drafters can help maintain the integrity of the legislative drafting. The Nigerian Institute of Advanced Legal Studies has published materials that discuss the principles and practices of legislative drafting within the Nigerian context. Additionally, guides and manuals have been developed to assist legislative drafters in creating laws that achieve policy objectives in a legally effective manner. These emphasises the importance of understanding the legislative instruction, analysing it, designing a draft, composing the draft, and scrutinizing the final output.⁸⁷

Regulating legislative drafters involves establishing criteria for the legislative drafting: qualifications for drafters, ethical standards, conduct, character, and mechanisms for oversight and accountability of drafters. Such regulations would contribute to the growth of legislative drafting

⁸⁶ Ibid.

⁸⁷ E. Azinge, *Manual of Legislative Drafting in Nigeria* (2014) <<https://thenationonline.net/guide-to-legislative-drafting/>> accessed March 2, 2024.

in Nigeria, ensuring that laws are not only technically sound but also reflect local circumstances and preferences. It is therefore necessary to enact laws to regulate legislative drafters. This law should serve as guiding principles and rules to Legislative drafters⁸⁸.

For example, in the United Kingdom, the Legislative and Regulatory Reform Act of 2006. In a nutshell, prescribes the procedures to be applied for enactment of legislation and Regulations (secondary legislation), it stipulates that holding consultations with citizens and others who are likely to be affected by prospective legislation or Regulation is a mandatory part of the legislative and regulation process and documented evidence of undertaking such consultations must be provided by government officials. This piece of legislation is significant considering that it demonstrates a keen understanding of the fact that as a supplement or complement to legislation, regulation (secondary legislation and other alternative tools) could be applied to solve certain problems. This is the equivalent of “alternatives to legislation” as it is called under Patchett’s seven strategies. This is one of the problems that Nigeria is yet to address, namely the over-reliance on legislation as a tool for solving all its problems.⁸⁹

4.3.2 Introduction of Legislative Drafters’ Seal:

Seals should be introduced for Legislative drafters, to enable qualified drafters to affix seals and stamps on documents prepared by them. The use of seals should be made mandatory by legislative drafters as the same is to be affixed on every document drafted or signed by a drafter to ensure the genuineness of the legislative drafter and the authenticity of the documents emanating from him.

⁸⁸ Preliminary Drafting Legislation in Nigeria <<http://www.nials-nigeria.org/Editedbookcovers/PreliminaryDRAFTING%20LEGISLATION%20IN%20NIGERIA.pdf>> accessed March 2, 2024.

⁸⁹ L. Hamalai, Report of the Visit to the United States Congress and the UK Parliament by the National Assembly and NILS Delegation, 20-23 October 2015.

The introduction of a Legislative Drafters' Seal in Nigeria would be a significant step towards professionalising the field of legislative drafting. It could serve as a mark of quality and authenticity, indicating that a legislative document has been prepared by a qualified and certified drafter. This could enhance the credibility of the legislative drafters and ensure that laws are drafted to a high standard, reflecting the policy objectives and legal requirements effectively. This is equally obtainable in other professional fields like Chartered Accountants, Certified Engineers, and so on, outside the general Accountants and Engineers, they have their separate seal.

The use of the seal will specifically state who drafted the legislation and will be more useful if the Legislative Negligence Act is enacted. In that Act, where legislation is found ineffective or results in litigation, it is through the seal that the drafter will be found to face the necessary penalty, such as deduction of salary until the litigation is over.

The concept of introducing a Legislative Drafters' Seal in Nigeria, is to aligns with the ongoing efforts to improve the skills and expertise of legislative drafters in the country⁹⁰. Such a seal could also be supported by the Association of Legislative Drafters and Advocacy Practitioners (ALDRAP), which comprises lawyers and professionals employed at the National Assembly and other legislatures within and outside Nigeria. The seal could potentially be used to certify documents drafted by members of this association, further ensuring the quality of legislation produced.⁹¹

Overall, the introduction of a Legislative Drafter Seal could be a valuable addition to the legislative drafting framework in Nigeria, promoting excellence and accountability in the creation of laws.

⁹⁰ D. Yakubu, Nigeria begins training on quality legislative drafting<<https://www.vanguardngr.com/2022/04/nigeria-begins-training-on-quality-legislative-drafting/>> accessed March 2, 2024.

⁹¹H. Abiola Become a Member of the Association of Legislative Drafters and Advocacy Practitioners (2022) <<https://loyalnigerianlawyer.com/become-a-member-of-the-association-of-legislative-drafters-and-advocacy-practitioners-register-now/>> March 2, 2024.

4.3.3 Attachment of Legislative Drafters to Legislatures in Nigeria as their Senior Legislative Aides and to Legal Departments of Ministries and Agencies of Government, as their Legislative Drafters in Charge of Drafting laws:

To ensure effective legislation in Nigeria, it is pertinent for legislative drafters to be attached to all legislatures in Nigeria as their senior legislative aides. Also, Ministries and Government agencies should employ the service of legislative drafters in their legal departments to oversee legislative drafting. It ensures that the legislative drafting process is handled by professionals with the necessary skills and qualifications. This approach can lead to the creation of more coherent, consistent, and high-quality legislation that aligns with national development goals and legal standards. It promotes accountability, efficiency, and the rule of law in the legislative process.

CHAPTER FIVE

SUMMARY, RECOMMENDATION AND CONCLUSION.

5.0 Chapter Overview

This chapter deals with the summary of the findings, recommendations suggested areas of further research and conclusion.

5.1 Summary of Findings

From the analyses in the preceding chapters, this research makes the following findings:

- a. There is no regulation guiding the legislative drafter in Nigeria. The non-regulation of legislative drafters as professionals has created an avenue for the involvement of non-

professionals, i.e. persons without cognate experience, formal qualifications, or expertise in legislative drafting. This has caused or brought a lot of poor-quality bills into society, which has led to ineffective legislation.

- b. The duty of loyalty and confidentiality to the officials providing drafting instructions and legislators are the core ethical and professional responsibilities of legislative drafters which every drafter must possess. Even when professional legislative drafters are engaged in drafting, they are not given a last chance to scrutinise the Bills to prevent the allegation of mischievous and fraudulent insertion of “new” clauses by legislators or staff of the legal departments of the National Assembly when they are assigned to “clean up” a Bill before the stage of third reading and final passage of the Bill.
- c. Absence of the Legislative Negligence Act as a way of regulating of legislative drafters as professionals constitutes a major impediment in the way of effective legislative drafting in Nigeria. This is because if the legislative drafters are regulated without a Negligence Act, it may reduce little or nothing in the ineffective legislation. Therefore, it is necessary that in regulating legislative drafters that Legislative Negligence Act will be enacted alongside with it.

5.2 Recommendations

Against the backdrop of the above, this research makes the following recommendations:

1. This research recommends for enactment of an Act regulating legislative drafters as a profession in Nigeria to be enacted by the National Assembly. This Act will control the conduct and character of the Legislative drafters and finally give perfect and good quality legislation. Having seen the effect of non-regulation of this professional as ineffective of the legislation. The Act will state the qualification of the drafters of a Bill, the conduct of the legislative drafters, and rules guiding the legislative drafters.

In addition to enacting an Act regulating the legislative drafters, Nigerian legislatures need to enact the Legislative Negligence Act, to ensure that the Legislative drafters are held responsible for any legislation drafted by that particular legislative drafter. This act will improve the quality and standard of the legislation in Nigeria.

2. The National Assembly, State Legislative Assemblies, Federal and State Ministries of Justice, National Institute of Legislative and Democratic Studies, and other relevant government agencies are advised, as a matter of necessity, to seek out and identify trained, experienced, and exposed legislative drafters, for national patronage as done in other Countries. Admittedly, indigenous experts in this field are few and most times silent in our midst, but they are nevertheless available.

Lawyers who are trained, experienced, and internationally exposed to legislative drafting are highly treasured assets anywhere in the world and are indeed in short supply. It is easily recognised that it is a higher and harder task to prepare a piece of legislation whose provisions are clear, precise, unambiguous, and sitting in harmony with any other provisions in any other legislation in the jurisdiction, than the interpretation and application of provisions in statutes to a given set of facts, which judges do. No wonder, good legislative drafters are high-standing national personalities, and often, recipients of national awards, in civilised jurisdictions. Nigeria should seek out these ‘treasures’, and engage and motivate them to assist in preparing our laws, this is the panacea for improved quality in legislative instruments in Nigeria.

3. This study also recommends for the enactment of legislation that prescribes the personnel and guides for legislative drafting and legislative drafters in Nigeria. This regulatory Act will give the legislative drafter the power to scrutinize the Bill from the beginning of the passage stage

until it is assent to by the President. This is to ensure that no new items or terms are added to the original Bill sent for debate and passage.

5.3 Suggestion for Further Studies

The researcher suggests the following topics be further researched;

- i) Strategies for Improvement of the Quality of Bills and Legislative Drafting in Nigeria.
- ii) An appraisal of the need to establish a regulatory framework for law drafting consisting of rules and standards contained in both primary and secondary legislation in Nigeria.

5.4 Conclusion

Legislative drafting, like any other form of legal drafting, is a standardised means of communication. The essential distinction is that unlike other forms of legal drafting which may be easily altered or changed, legislative drafting is more of a permanent enactment that stands on its own and speaks for itself without any form of assistance, elucidation or explanation from the drafter or drafters. Care should be taken, therefore, in drafting a bill. Legislative drafting lays down our rights and obligations, our powers, our privileges, and our duties. It is a command or series of commands in many respects. It should not admit of a misunderstanding as to the message that it seeks to convey. Although resorting to legislative aids like marginal notes and interpretation act, it should be comprehensive and comprehensible. There is a need to regulate legislative drafters as professionals in Nigeria. Also, a well-equipped drafting office is a prerequisite for having good laws drafted.

On this note, the persons to be entrusted with the duty of drafting good legislation must be regulated to ensure a perfect job. If laws are good laws, the citizens easily obey them, and this makes the members of the society live in an atmosphere of peace and tranquillity which creates

development. Finally, unless and until professional legislative drafters with cognate experience and formal qualifications are involved in the project of drafting from inception to completion, the successful outcomes desired will be doubtful.

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