

**A CRITICAL EVALUATION OF THE STAGES OF LEGISLATIVE DRAFTING:
ENHANCING THE EFFECTIVENESS OF ACTS OF THE NATIONAL ASSEMBLY**

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**BEING A DISSERTATION SUBMITTED TO THE NATIONAL INSTITUTE FOR
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LEGISLATIVE DRAFTING**

JUNE, 2024

DECLARATION

I declare that this dissertation entitled “**A Critical Evaluation of the Stages of Legislative Drafting: Enhancing the Effectiveness of Acts of the National Assembly**” is entirely my work and has not been previously presented either in part or whole to this University or any other Academic Institution for any degree or program, and that the sources used have been duly acknowledged by proper references.

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CERTIFICATION

I hereby certify that this dissertation titled “**A Critical Evaluation of the Stages of Legislative Drafting: Enhancing the Effectiveness of Acts of the National Assembly**” was carried out by Alili Jane Chidaka with Matric. No: PG/NLS2215160 under my supervision. It is further certified that this dissertation has met the minimum acceptable standard of one of the requirements for the award of Masters in Legislative Drafting (LL.M), University of Benin/National Institute for Legislative Studies.

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DEDICATION

To the Almighty God, I dedicate this dissertation to your Glory and Wisdom. Your divine guidance and providence have been my constant source of strength and inspiration throughout this academic journey.

I also lovingly dedicate this work to the memory of my late father, Nze, Ogbunyuruoku Nze, whose unwavering support, encouragement and legacy continue to motivate me to strive for excellence. May his soul continue to rest in peace.

May this dissertation be a testament to the power of perseverance, hard work and faith.

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TABLE OF CONTENT

Title Page	i
Declaration	ii
Certification	iii
Approval Page	iv
Dedication	v
Acknowledgement	vi
Table of Contents	vii
Table of Cases	xii
Table of Statutes	xiv
Table of Abbreviation	xv
Abstract	xvi

CHAPTER ONE

INTRODUCTION

1.1	Background to The Study	1
1.2	Statement of The Research Problem	3
1.3	Research Questions	5
1.4	Aim and Objectives of The Study	5
1.5	Scope and Delimitation of Study	6
1.6	Significance of the Study	6
1.7	Research Methodology	7
1.8	Synopsis of Chapter	9

CHAPTER TWO
CONCEPTUAL CLARIFICATION, LITERATURE REVIEW, HISTORICAL
BACKGROUND AND THEORETICAL FRAMEWORK OF LEGISLATIVE
DRAFTING

2.1	Conceptual Clarifications	10
2.2	Literature Review	14
2.3	Historical Development of legislative drafting and its Place in the study of law	20
2.3.1	History of Legislative Drafting within United Kingdom	23
2.3.2	How Legislative Drafting Developed in the 19 th Century	23
2.3.3	Nineteenth Century Improvements	25
2.3.4	History of Legislative Drafting within Nigeria	29
2.3.5	The Significance of Legislative Drafting	30
2.3.6	The National Assembly and Legislation in Nigeria	32
2.4	Theoretical Framework	34
2.4.1	Thornton's Five Stages of Drafting	36
2.4.2	Legislative Drafting Models	42
2.4.3	Stakeholder Theory	42
2.4.4	Drafting Principles and Techniques	42

CHAPTER THREE

CRITICAL EVALUATION OF THE STAGES OF LEGISLATIVE DRAFTING VIS A VIS GUIDELINES TO ENHANCE THE EFFECTIVENESS OF ACTS OF THE NATIONAL ASSEMBLY

3.1	Drafting challenges identified in the Employees' Compensation Act, 2010	
		50
3.2	Drafting challenges identified in the New Pension Reform Act, 2014	
		54
3.3	The Absence of Inclusive Consultation in Legislative Drafting and its Impact on the Effectiveness of Enacted Legislation	58
3.3.1	Key Aspects of the Absence of Inclusive Consultation	58
3.3.2	Impacts of Consultation on the Effectiveness of Enacted Legislation	
		60
3.3.3	Positive Impacts of Inclusive Legislation on the Enacted Legislation	
		62
3.4	Evaluation of Contemporary Legislative Drafting Practices ...	63
3.4.1	Clear and Simple Language	63
3.4.2	Drafting for the Digital Age	64
3.4.3	Features of Drafting for the Digital Age	65
3.4.4	Stakeholder Engagement and Consultation	66
3.5	Best Practices for Ensuring Effective Acts by the National Assembly	
		67

3.6	Comparative Analysis of Nigeria to Ghana and United States of America (USA)	
		70

CHAPTER FOUR

DISSECTING LEGISLATIVE DRAFTING: STAGES, PROBLEMS, AND PATHWAYS

4.1	Key Questions and What the Research Revealed	73
4.2	Importance of the New Findings from the Analysis	78
4.3	Ambiguous Legislative Goals	79
4.4	Unskilled Drafting Personnel	81
4.5	Inadequate Collaboration	82

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1	Summary of Findings	85
5.2	Recommendations	86
5.3	Conclusion	88
5.4	Contribution to Knowledge	89
	References	91

TABLE OF CASES

Action Congress of Nigeria (ACN) v INEC (2013) 13 NWLR (Pt 1370) 161.

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Land Use Act, 1978.

National Minimum Wage Act, 2019.

Nigeria Data Protection Act, 2023.

Pension Reform Act, 2014.

Petroleum Industry Act, 2021.

LIST OF ABBREVIATIONS

INEC	Independent National Electoral Commission.
NIALS	National Institute for Advanced Legal Studies.
OECD	Organisation for Economic Co-operation and Development.
PLAC	Policy and Legal Advocacy Centre.

ABSTRACT

This study addressed the persistent challenges in legislative drafting within the National Assembly, where weak institutional structures, inadequate expertise, and limited stakeholder consultation have frequently resulted in ambiguous, inconsistent, and difficult-to-implement laws. The research specifically aimed to (i) identify the established stages in effective legislative drafting, (ii) assess the extent of the National Assembly's compliance with these stages, (iii) determine how non-compliance affects the drafting process, and (iv) identify best practices for improving compliance and effectiveness. The study was justified by the urgent need to improve the clarity, coherence, and enforceability of legislation in Nigeria and to align domestic practices with global drafting standards.

A doctrinal research method was adopted, supported by comparative legal analysis. Literature, statutes, and selected judicial decisions from Nigeria, Ghana, and the United States were reviewed to address the first and second objectives. For the third objective, content analysis of legislative instruments was conducted to evaluate the practical impact of non-compliance on legislative quality. The fourth objective was achieved through the examination of documented best practices from comparative jurisdictions and the identification of reform strategies adaptable to the Nigerian context. Data were synthesised to provide an integrated evaluation of the legislative drafting process.

Findings revealed that the main stages of legislative drafting in the Nigerian National Assembly included policy formulation, instructions to drafters, drafting design, composition, scrutiny, and approval. However, these stages were often unstructured,

leading to quality gaps in draft laws. Compliance with established drafting stages was found to be inconsistent, hindered by poor coordination, inadequate training, and limited stakeholder participation. Non-compliance resulted in vague provisions, inconsistent language, and laws that were prone to misinterpretation and enforcement delays. Comparative analysis showed that countries like Ghana and the United States benefited from structured drafting frameworks, digital drafting tools, and systematic stakeholder consultations, which Nigeria largely lacked.

Based on these findings, the study recommended the adoption of a structured and well-documented drafting framework, improved training and capacity-building for legislative drafters, and the institutionalisation of broad-based stakeholder consultation at all stages. The integration of modern digital drafting tools and consistent language standards was also proposed to enhance clarity and reduce ambiguity. Strengthening institutional review mechanisms and fostering inter-agency coordination were further advised. The study concluded that reforming the drafting stages, particularly instruction, analysis, design, composition, and scrutiny is essential to producing clear, coherent, and enforceable Acts that can effectively address societal needs and stand the test of judicial interpretation.

Words Count: 405 Words.

Keywords: Acts, Bills, Legislative Drafting, National Assembly, Stages.

CHAPTER ONE

INTRODUCTION

This chapter provides a concise and relevant background to the research study, familiarizing the reader with the context, research questions, objectives, limitations and significance of the study, thereby laying a solid foundation for understanding the research that follows.

1.1 Background to the Study:

The process of legislative drafting is a crucial aspect of law making, as it lays the foundation for the creation of laws that govern a nation. In Nigeria, the National Assembly is responsible for enacting laws that impact the lives of the citizens¹, and the quality of these laws depends largely on the effectiveness of the legislative drafting process.²

Over the years, Nigeria has faced challenges in its law-making process, leading to laws that are often unclear, ambiguous, or inconsistent³. This has resulted in confusion, misinterpretation, and unintended consequences. The Nigeria's legislative drafting process has been criticized for lacking transparency, accountability and stakeholder engagement.

Despite efforts to improve the legislative drafting process, the challenges persist. The National Assembly's drafting process remains complex, and the quality of laws enacted varies widely. Some laws are well-drafted and effective, while others are poorly drafted,

¹ CFRN 1999 4(1) (2).

² Nicoletta Staem, 'Governance, Democracy and Evaluation' (Evaluation 7,7, 2006) 12(7).

³ *Obasanjo v Yusuf* (2004) 9 NWLR (Pt. 877) 144.

leading to confusion and misinterpretation. Some laws are even made without due consultation for relevancy, resulting to high cost of governance and redundant laws⁴.

The legislative drafting process is a fundamental aspect of lawmaking, as it determines the clarity, enforceability, and relevance of enacted laws. In Nigeria, the National Assembly serves as the primary legislative body, responsible for making laws that address societal needs, uphold constitutional principles, and foster national development.

Globally, legislative drafting has evolved to incorporate advanced practices aimed at enhancing the precision, accessibility, and enforceability of laws. Comparative examples, such as the robust stakeholder consultation mechanisms in Ghana and the technological advancements in the United States, highlight the potential for innovation in drafting processes. These practices underscore the importance of clarity, public participation, and rigorous scrutiny in legislative drafting.

In Nigeria, key legislation such as the *Petroleum Industry Act (2021)* and the *Freedom of Information Act (2011)* illustrate both successes and shortcomings in the drafting process. While these laws address significant policy issues, their implementation has been hindered by drafting ambiguities and structural inconsistencies. Cases such as *Attorney General of Lagos State v. Attorney General of the Federation (2004)* further exemplify the challenges posed by unclear legislative provisions, which often necessitate judicial interpretation.

⁴ <<https://www.premiumtimesng.com/news/headlines/672110-oronsaye-report-full-list-of-agencies-to-be-scrapped-merged-relocated.html?tztc=1>> accessed 8 July, 2024.

This study therefore examines the stages of legislative drafting, viz instructions, analysis, design, composition, and scrutiny, as they relate to the Acts of the National Assembly. By critically evaluating these stages, the study aims to identify weaknesses, explore global best practices, and propose recommendations for enhancing the effectiveness of Nigeria's drafting process. Addressing these challenges is essential to ensuring that laws not only align with national goals but also respond effectively to the dynamic needs of society.

1.2 Statement of the Research Problem:

The use of lengthy sentences in drafting a provision of law can make the law unclear by causing ambiguity and confusion, as complex sentence structures and excessive wording can obscure the intended meaning and lead to multiple interpretations. This ultimately hinders effective understanding and application of the law.

Again, the National Assembly has repeatedly enacted laws that duplicate existing legislations such as the National Human Rights Commission Act, 2010 and the Public Complaints Commission Act, 2004 inheriting similar flaws and ambiguities, thereby perpetuating legal inconsistencies and confusion, and highlighting the need for a more effective and rigorous drafting process. Both Acts provide overlapping mandates in the area of receiving and investigating complaints about human rights violations and administrative injustice. In February 2024, the Federal Executive Council formally approved the implementation of the Stephen Oronsaye Report on restructuring federal agencies. As part of this reform, the **Nigerian Investment Promotion Commission (NIPC)** was officially merged with the **Nigerian Export Promotion Council (NEPC)**, among others. This

strategic merger was intended to eliminate redundant functions, improve operational efficiency, and streamline governance in investment and trade promotion⁵.

Legislative drafting in Nigeria is expected to serve as the backbone of a functional legal system, structured, evidence-based, and responsive to the needs of society. Yet paradoxically, the process often unfolds as though clarity, precision, and coherence were optional luxuries. It appears that laws are drafted not to solve problems, but to create new puzzles for the judiciary, the executive, and the public to unravel. In a system where laws are meant to reflect societal order, the drafting process occasionally seems designed to test the limits of legal interpretation rather than provide practical governance.

While global best practices in countries such as Ghana and the United States demonstrate the value of stakeholder consultation, advanced technology, and robust scrutiny mechanisms in legislative drafting, Nigeria's drafting process often falls short in adopting these measures. This gap limits the capacity of laws to address contemporary issues effectively, undermining public trust and governance outcomes.

This study's goal is to critically evaluate the legislative writing stages in relation to the Nigerian National Assembly's Acts.

By learning from global best practices, it aims to pinpoint the procedural errors and structural flaws that compromise the efficacy of legislation.

⁵ <<https://www.premiumtimesng.com/news/headlines/672110-oronsaye-report-full-list-of-agencies-to-be-scraped-merged-relocated.html?tztc=1>> accessed 8 July, 2024

1.3 Research Questions:

- i. What are the established stages in effective legislative Drafting?
- ii. To what extent does the National Assembly comply with the requirements of these stages?
- iii. To what extent does non-compliance or otherwise impact on the legislative drafting process?
- iv. Are there best practices for improving compliance and effectiveness of legislative drafting in the National Assembly?

1.4 Aim and Objectives:

The aim of this research is to identify the strengths and weaknesses of the legislative drafting process, assess the quality, relevance and effectiveness of some selected laws enacted by the National Assembly, and propose recommendations for improvement.

The objectives of this research are to:

- i. To examine the established stages that constitute effective legislative drafting.
- ii. To evaluate the degree to which the National Assembly adheres to the identified stages of legislative drafting.
- iii. To investigate the implications of partial or non-compliance with the established drafting stages on the overall quality, coherence and enforceability of legislation enacted by the National Assembly.

- iv. To identify and propose best practices and reform strategies aimed at enhancing the effectiveness and procedural compliance of legislative drafting within the National Assembly.

1.5 Scope/Delimitation of Study:

This research will focus on the pre-drafting stage, including the identification of the need for legislation and the preparation of instructions for legislative drafters. It will also cover the drafting stages, including the preparation of the initial draft and the review process. Consultation stage, including stakeholder's engagement is also a necessary tool in pursuit of this research. The scope is also open to the approval stage, including the enactment, signing and publication of the Act.

Geographically, the research will focus on the National Assembly of Nigeria and the legislative drafting at the federal level. Therefore, the focus will be on the laws enacted by the National Assembly and will not examine state or local legislation.

1.6 Significance of the Study:

This research seeks to add to the body of knowledge on development of effective legislative drafting processes for better quality legislations. The findings and recommendations will be valuable for policymakers, legislative drafters and scholars seeking to improve the law-making process.

The research will also promote the effective stakeholder engagement to ensure that laws reflect the needs and concerns of the people, leading to better governance, development, and strengthening of democratic institutions in Nigeria.

1.7 Research Methodology:

This study adopted a doctrinal legal research approach, which involves a structured and analytical examination of legal principles, statutes, case law, and legislative instruments.⁶

The aim is to extract, interpret, and evaluate legal norms and practices as they relate to the drafting stages, coherence, and effectiveness of legislative texts.

The research relied primarily on qualitative data obtained through an in-depth review of primary legal sources, including the Constitution of the Federal Republic of Nigeria, statutes enacted by the National Assembly, judicial decisions, and other legislative instruments. These are supplemented by secondary sources such as scholarly textbooks, journal articles, official government reports (e.g., the Oronsaye Report), policy documents, and legal drafting manuals. This layered data collection strategy enabled a holistic understanding of both the theoretical underpinnings and practical realities of legislative drafting in Nigeria.

The data collected comprised:

- i. Primary legal texts: Statutes, case law (e.g., *Attorney General of Lagos State v. Attorney General of the Federation*), and legislative provisions relevant to drafting practices.
- ii. Literature Review: Legal scholarship by authors such as V.C.R.A.C. Crabbe, G.C. Thornton, and Helen Xanthaki, who have extensively discussed legislative drafting stages.

⁶ Bethel Uzoma Ihugba, *Introduction to Legal Research Method and Legal Writing* (Malthouse Press, 2020) 5.

- iii. Comparative materials: Legislative practices from other jurisdictions, including Ghana, and the United States to provide benchmarking and best practices.
- iv. Institutional documents: Reports and publications from institutions like the National Institute for Legislative and Democratic Studies (NILDS), as well as reform-oriented documents like the Stephen Oronsaye Report.

A qualitative content analysis method is employed to examine and interpret the legal texts and scholarly reviews. The analysis involves:

- i. Doctrinal analysis, to interpret the legal provisions and principles guiding legislative drafting.
- ii. Comparative analysis, to contrast Nigeria's legislative drafting practices with those of other jurisdictions, highlighting gaps and potential improvements.
- iii. Case study analysis, which illustrates the practical application of drafting practices and their judicial interpretation or consequences. The integration of these analytical tools allows for both descriptive and critical evaluation of the drafting process, legislative quality, and effectiveness.

The doctrinal approach is justified as the most appropriate for this study because it aligns with the objective of evaluating the legal framework and stages of legislative drafting. Legislative quality is primarily a legal question, requiring careful examination of normative texts and drafting procedures. Moreover, doctrinal research allows the researcher to explore how legislative intent is framed, interpreted, and implemented, which is central to understanding the effectiveness of laws. The inclusion of comparative and case study

analyses further enhances the study by offering practical and international perspectives, ensuring the research remains contextually grounded while also outward-looking.

1.8 Synopsis of Chapter:

This study is divided into five chapters. Chapter one contains the introduction which will set the context and outline the research aim and objectives. It also contained the scope and methodology, research questions, the significance of this research to scholars and legislative drafters. The second chapter covered theoretical, conceptual and historical literature on stages of legislative drafting. Chapter three discussed in detail and focused on the practice and rules of drafting using Employees' Compensation Act, 2010 (ECA 2010) and Pension Commission Act, 2014 (PENCOM Act, 2014) as case study. Examining some of the sections of these Acts elicited the impact of good legislative drafting on the constitutional mandate of the Legislature. Chapter four highlighted the research questions, briefly explained the problem and stated my position. Lastly, chapter five concluded with recommendations, conclusions and contribution to knowledge.

CHAPTER TWO

CONCEPTUAL CLARIFICATION, LITERATURE REVIEW, HISTORICAL BACKGROUND OF LEGISLATIVE DRAFTING AND THEORETICAL FRAMEWORK

This chapter emphasized the importance of establishing a clear conceptual framework to provide a comprehensive understanding of the topic, highlighting the need for a formalized overview to clarify key concepts. Thus, relevant literatures and theoretical framework were researched on and adequately tapped from.

2.1 Conceptual Clarifications:

Legislative drafting: is a crucial process in the creation of laws, involving the transformation of policy ideas into concrete legislative proposals. As E. Azinge rightly stated, “Legislative Drafting is a critical aspect of law-making in any organized society⁷. In our constitutional democracy where the organic law is the Constitution of the Federal Republic of Nigeria 1999. Legislative drafting is a veritable instrument for distilling and ventilating policies and ideas of government both at the Federal level and State levels.” The role of the National Assembly is crucial in this process, as it is responsible for enacting laws that govern the nation.⁸ Although legislative drafting does not include the origination of the ideas to be incorporated in the bill, a major part of the work for the drafter consist of helping to clarify the sponsors’ concepts and raising policy issues that the sponsor may not

⁷ Epiphany Azinge and Vincent Madu , *Fundamentals of Legislative Drafting* (Nigerian Institute for Advanced Legal Studies (NIALS), 2002). See forward.

⁸ CFRN 1999 S. 4.

have considered. The drafting process thus involves far more than simply writing, it actually provides the principal mechanism for developing substantive policy in many cases⁹. To ensure effective legislation, it is essential to understand the steps of legislative drafting and their significance in producing Acts of the National Assembly.

Pre-drafting is the initial phase of the legislative process, which includes determining the need for legislation, creating policies, and creating drafting instructions¹⁰. This stage is critical in setting the foundation for the entire legislative drafting process. Clarity in policy objectives and instructions is vital to ensure that the subsequent stages are well directed.

The second step is the drafting stage, the legislative draftsman translates the policy objectives and instructions into legal language¹¹. This stage requires precision, clarity, and coherence to ensure that the draft legislation accurately reflects the intended policy. Ambiguity or vagueness in drafting can lead to confusion, misinterpretation, or unintended consequences¹².

Step three is consultation and review stage, this involves seeking input from relevant stakeholders, experts and other interested parties. This step is essential in ensuring that the draft legislation is practical, effective, and aligns with the needs of the stakeholders or

⁹ Legislative Drafting Desk Reference, 2.

¹⁰ Dr. Tonye Jaja & Mrs. Okongbowa Adesina, *Introduction to Legislative Drafting and Drafting Process in Nigeria* (Malthouse Law Books, 2017) 196.

¹¹ (n10) 202.

¹² Ibid.

intended beneficiaries. Review and feedback from stakeholders can help identify potential issues, ambiguities or areas for improvement¹³.

Based on the feedback received during the consultation and review stage, the draft legislation undergoes revision and refinement. This involves clarifying ambiguities, addressing concerns and making necessary adjustments to ensure that the legislation is clear, concise and effective.

The draft legislation is prepared for submission to the National Assembly during the enactment stage. This includes ensuring that the draft is in the required format, complies with legislative standards and is accompanied by necessary supporting documents. Once presented, the National Assembly debates, amends (if necessary), and enact the legislation into an Act¹⁴.

A Bill: is a proposed legislative instrument submitted to a legislative body with the intention of becoming law.¹⁵ It represents a preliminary draft that outlines the substance, objectives, and mechanisms for regulation or reform within a particular legal framework. Bills may originate from the executive arm as government bills or be initiated by individual legislators as private member's bills. In the National Assembly, a bill must pass through multiple readings, committee scrutiny, and approval by both legislative chambers before it can be assented to by the President and become law.

¹³ (n10) 242.

¹⁴ (n10) 254.

¹⁵ Greenberg Daniel, *Craies on Legislation* (11th edn., Sweet & Maxwell, 2017) 131.

An Act: refers to a bill that has successfully passed through all legislative stages and received the requisite formal assent by the President, thereby acquiring the force of law.¹⁶

An Act is binding and enforceable, having undergone legislative debate, amendment, and final endorsement. It is the principal source of statutory law and is used to regulate social conduct, confer rights, impose obligations, and structure governmental authority.

A Legislator: is an elected or appointed member of a legislative body empowered to make, amend, or repeal laws. Legislators serve a dual role, they represent the interests of their constituents and participate in the legislative process, including debating bills, voting on legislation, and overseeing the executive arm. Their legislative mandate is conferred by constitutional and electoral frameworks, and they function within formal procedures established by the rules of their legislative chamber.¹⁷

A Legislative Drafter: is a legal professional with specialized expertise in transforming policy proposals into coherent and enforceable legislative texts. The drafter's task involves interpreting policy intentions, organizing legal content logically, choosing precise language, and ensuring conformity with constitutional and drafting conventions. Drafters play a crucial technical and advisory role in shaping legislation that is clear, accessible, and legally sound.¹⁸

¹⁶ G.C. Thornton, *Legislative Drafting* (4th edn., Butterworths, 1996) 5.

¹⁷ Garner Bryan, *Black's Law Dictionary* (11th edn., Thomson Reuters, 2019).

¹⁸ Crabbe V.C.R.A.C, *Understanding Legislative Drafting* (Cavendish Publishing, 1994) 6.

2.2 Literature Review:

Dickerson¹⁹ offers a methodical checklist for organising provisions, eliminating surplusage, and avoiding unforeseen loopholes. His enduring contribution is the “golden rule” of putting reader comprehension first. Still, Dickerson’s text focuses on micro-level compositional choices and not on recalibrating the broader institutional stages that lead to those choices, which this research seeks to address.

In his book, **Justice Pigeon**²⁰ converts decades of Supreme Court decisions in Canada into useful advice for drafters. prefers concrete language, avoids constructing concepts excessively, and expects multilingual coherence. He underscores the symbiosis between precise wording and faithful judicial application, illustrating each point with bilingual case extracts. Nonetheless, Pigeon’s work presumes the existing governmental drafting machinery stays intact, whereas this research scrutinises and redesigns that machinery, stage by stage, for the National Assembly.

In his work, **Crabbe**²¹ offers a comprehensive analysis of the legislative drafting process, covering its various stages. His work also emphasizes the importance of clear and concise language in legislative drafting. He emphasizes on the need for logical structure to ensure legislation is easily understood and interpreted. His extensive experience in legislative drafting and his expertise as a former Justice of the Supreme Court of Ghana and Professor of Legislative Drafting make his insight and guidance valuable in legislative Drafting. Crabbe argues that legislative drafting is a specialized field that demands ongoing learning

¹⁹ Reed Dickerson: *The Fundamentals of Legal Drafting* (2nd edn., Little, Brown & Co., 1986).

²⁰ Louis-Philippe Pigeon, *Drafting and Interpreting Legislation* (Carswell, 1988).

²¹ Crabbe V.C.R.A.C, *Legislative Drafting*, (Cavendish, 1993).

and hands-on experience. It involves intense intellectual effort and long hours of focused work. As Crabbe notes, developing the legislative scheme is one of the most critical steps in the drafting process. This scheme serves as the foundation for the bill's overall coherence and quality. It reflects the drafter's vision of what the final Act of Parliament should look like, both in its structure and its substance. Without this framework, the resulting law may come across as disorganized or incomplete.

It will appear as though the task was poorly planned and executed. The legislative scheme is invariably, the building's architectural design which is known as an Act of Parliament²².

Eskridge²³ argues that statutes are living instruments whose meaning shifts with societal change, implying that drafters should embed adaptive language. His work is rich in constitutional theory and interpretive philosophy, but it rarely addresses the nuts-and-bolts pipeline from instructions to scrutiny that this research seeks to improve.

Thornton was a renowned and eminent drafter. He divided the drafting process into five stages namely: understanding the proposal, analyzing the proposal, designing the law, composing and developing the draft. When drafters follow the five key stages of the drafting process outlined by Thornton, they significantly increase the chances of producing a well-structured and high-quality bill. This approach helps ensure that the legislation is effective, aligns with core drafting principles, and clearly reflects its intended purpose²⁴.

The drafting process can be better analysed by breaking it up into five stages. It allows for

²² Crabbe V.C.R.A.C, *Legislative Drafting*, (Cavendish, 1993) 12-15.

²³ William Eskridge Jr., *Dynamic Statutory Interpretation* (Harvard University Press, 1994).

²⁴ Garth Thornton, *Legislative Drafting*, (4th edn., London Butterworths, 1996) 12-15.

the identification of challenges within the drafting process and helps uncover the reasons behind them. This paves the way for developing and applying effective solutions. It also supports a thoughtful evaluation of the issues involved, encourages the use of improved or alternative drafting techniques, and ensures that the intended audience of the law is clearly understood and taken into account²⁵.

According to Thornton, legislative drafting is a crucial aspect of law making and its quality determines the effectiveness of laws. He emphasizes the importance of clarity, precision and consistency in legislative drafting. He also highlights the need for legislative drafters to consider the context, purpose and impact of legislation. He particularly identifies the need for pre-drafting, consultation and reviewing before approval. He emphasizes that the initial stage of drafting involves fully understanding the legislative proposal. This includes reviewing the drafting instructions carefully. The drafter must clearly grasp the goals of the proposed law and the specific problems it is meant to address²⁶. To fully understand a legislative proposal, certain qualities and practices are essential for a drafter. The drafter should possess strong personal attributes, including patience and attentiveness. It is important for the drafter to approach the task carefully, using innovative methods and sharp analytical skills. Time management also plays a crucial role, and effective communication is key, particularly the ability to express ideas clearly using simple, understandable language to ensure the proposal is correctly interpreted.

²⁵ See generally: Duncan Berry, *Audience Analysis in the Legislative Drafting Process* (2006); The Loophole – *Journal of the Commonwealth Association of Legislative Counsel*.

²⁶ Thornton *Legislative Drafting*, (4th edn., London Butterworth, 1996) 124-128.

Bowman's essays²⁷, particularly “Legislative Drafting after Renton”, reflect decades in the UK Office of the Parliamentary Counsel. He chronicles practical lessons from Whitehall, advocating for early policy-maker engagement and iterative redrafting. Although he hints at process reform, his reflections remain anecdotal and UK-specific, whereas this research proposes a systematic, Nigeria-tailored restructuring of every drafting phase.

Writing from a Canadian vantage point, **Sullivan**²⁸ explores how drafters can anticipate and guide judicial readings. Her “shared enterprise” model stresses purposive drafting, context, and evolving linguistic conventions. Yet Sullivan’s gaze is downstream, she concentrates on interpretation after enactment, whereas this research moves upstream, probing how Nigeria’s legislative workflow can be redesigned before a Bill/Law ever reaches the courts.

Professor Keith Patchett suggests that drafters use a clear and straightforward writing style, adhering to proper grammar and sentence structure while addressing issues directly. Drafters are also encouraged to follow the established legislative form and style specific to their jurisdiction. A well-organized draft, presented in an accessible format, is essential. Incorporating visual tools can help readers navigate the document more easily. Additionally, using plain, modern language and avoiding overly complex sentences will make the draft more user-friendly²⁹.

²⁷ Geoffrey Bowman, *Legislative Drafting after Renton* (Statute Law Review, 2005).

²⁸ Ruth Sullivan, *Statutory Interpretation* (4th edn., Irwin Law Inc., 2007).

²⁹ See generally: Keith Patchett, *Legislative Drafting: A Practical Guide*, (Commonwealth Secretariat, 2006).

Stefanou & Xanthaki in the collection - *Drafting Legislation*³⁰ assembles essays from Commonwealth drafters on topics ranging from gender-neutral language to IT-supported version control. The editors frame legislative drafting as an interdisciplinary craft, integrating linguistics, policy analysis, and technology. While the volume spotlights innovative tools and stylistic trends, it stops short of proposing a holistic reform of the instruction-to-scrutiny sequence itself, which is the transformative agenda at the heart of this research.

McLeod³¹ frames drafting as a species of applied linguistics, pairing descriptive grammar with statutory interpretation theory. He devotes chapters to ambiguity, definitional structure, and amendment mechanics, supporting each with British case law. McLeod, however, treats the drafting process as a given backdrop, he does not interrogate how reorganising those stages might raise the overall quality of legislation in a specific parliament, which is the essence of this research.

Greenberg³² offers a practitioner's guide replete with drafting precedents, commentary on internal parliamentary rules, and tips for explanatory notes. The emphasis is on practical craftsmanship within existing UK procedures; by contrast, this research argues that effectiveness in Nigeria demands re-engineering the procedures themselves, not merely perfecting work within them.

³⁰ Stefanou & Xanthaki, *Drafting Legislation A Modern Approach* (Routledge, 2008).

³¹ Ian McLeod, *Principles of Legislative and Regulatory Drafting* (Hart Publishing, 2009).

³² Daniel Greenberg, *Laying Down the Law* (Sweet & Maxwell, 2011).

In *Reading Law*, **Scalia and Garner**³³ catalogue canons of construction, urging drafters to write with judicial presumptions in mind. Their prescriptive maxims are valuable for avoiding doctrinal pitfalls, yet the book's scope stops short of analysing how institutional drafting stages could be reorganised to improve legislative efficacy, the precise problem this research tackles.

Helen Xanthaki³⁴ noted that formal drafting education and traditional mentoring are both valuable and work best when combined. These perspectives make it clear that proper training is essential for drafters to carry out their responsibilities effectively.

Zander³⁵ surveys UK statute production, including political negotiation, committee work, and public consultation. While he identifies bottlenecks and democratic deficits, his treatment is descriptive rather than prescriptive, and he does not weave together a stage-by-stage reform blueprint.

Butt³⁶ argues that clarity lowers litigation and improves democratic accessibility, supporting "plain language" legislation that read as naturally as ordinary text. He dissects word choice, sentence length, and document design, illustrating how small stylistic alterations ripple into doctrinal consequences. While insightful on linguistic technique, Butt largely sidesteps the institutional workflow, his analysis seldom touches the sequential

³³ Antonin Scalia & Bryan Garner, *Reading Law* (Thomson/West, 2012).

³⁴ Helen Xanthaki, *Thornton's Legislative Drafting* (5th edn, Bloomsbury, 2013).

³⁵ Michael Zander, *Law-Making Process* (7th edn., Hart Publishing, 2015).

³⁶ Peter Butt & Richard Castle, *Modern Legal Drafting* (Cambridge University Press, 2016).

stages (instruction through scrutiny) that this research seeks to overhaul for the National Assembly.

Irving³⁷, in his article places legislative text within a broader nation-building narrative, highlighting symbolism, inclusivity, and post-colonial legitimacy. Her lens is macro-political and sociological, whereas this research drills into the technical redesign of the five drafting stages to yield more precise, implementable laws.

To complement Thornton, Crabbe and others work, the researcher intends to explore the angle of Technology and innovation, investigating how technology such as Artificial Intelligence, natural language processing, or blockchain can enhance the legislative drafting process and efficiency.

Building on Thornton's emphasis on consultation, the researcher intends to explore ways to enhance stakeholder engagement in the legislative drafting process, including public participation and interagency collaboration.

2.3 Historical Development of Legislative Drafting and its Place in the Study of Law

Ancient History of Legislative Drafting – Legislative Drafting in the Context of Egypt and Rome:

Legislative drafting has a long history that spans thousands of years. In ancient times, mankind relied mostly upon Oral Laws/Legislation which were passed by word of mouth but oral laws proved too unreliable and subject to the whims and caprices of the maker.

³⁷ Helen Irving, *Constitutional Drafting and Nation Building* (Cambridge University Press, 2017) 35.

Further, it was arbitrary and abused on most occasions. Ancient Egypt evolved a class of priests/scribes who were the *de facto* legislative drafters of their civilization. The first legal codes were found in Mesopotamia (the 60-clause Laws of Eshua). Biblical Laws, the Ten Commandments, 1513 B.C.E.³⁸

Under the Byzantine Empire (Tribonian was Justinian's Chief Scribe and is reputed to have developed a distinct style of drafting legislation. King Draco's strict laws of ancient Greece, where the phrase 'Draconian Legislation' originates; the *juris prudentes* drafted legislation with the help of Scribes in ancient Rome among others.³⁹

The first reported form of oral legislation is the Holy Bible account of the fall of the first man and woman on earth (Adam and Eve) in the Garden of Eden. They were orally instructed to take care of the garden and eat any fruit in the garden they so desire except the fruit from a particular tree. In defiance of the directive, they consumed food from the tree they were told not to. This resulted in expulsion from the Garden of Eden as punishment⁴⁰.

One of the foremost forms of written legislation can be traced to the oldest civilization in history: ancient Egyptian civilization, over a span of 50 centuries ago. The Ancient laws and administrative rules evolved over time, with legal and legislative texts often inscribed on palace and temple walls or recorded on papyri in various scripts such as hieroglyphic,

³⁸ (n10) 48.

³⁹ (n10) 50.

⁴⁰ Genesis 3: 1 – 6, *The Holy Bible*.

demotic, Coptic, Greek, Latin, and Hebrew, Aramaic and Arabic. In terms of legal systems, Egypt is the oldest nation in the contemporary world.⁴¹

Around 5200 years ago, King Menes established one of the earliest known legislative systems by declaring the law of ‘Tehut’, the god of wisdom, as the sole legal code to be applied throughout ancient Egypt.

From this period, ancient Egyptian legislation advanced and touched on various issues.⁴²

Chapin (2010) wrote in his book that Ur-Nammu, a king of Ur, who reigned 2111-2094 BC about three centuries before Hammurabi wrote the oldest Codes in Mesopotamia and his Codes inspired that of King Hammurabi. The Code of Ur-Nammu (2100-2050 BCE) which originated with either Ur-Nammu or his son Shulgi of Ur, is the oldest Code of laws in the world.⁴³

Around 1752 BCE, King Hammurabi came up with the Codes of Hammurabi consisting of 282 Statutes. Hammurabi Code epitomized the principle known as *Lex Talionis*, the law of retributive justice, in which punishment corresponds directly to the crime, better known as the concept of “an eye for an eye and a tooth for a tooth”. Future codes were modeled after Hammurabi’s Law Code, which dealt rigorously with the evidence of the offense and established a precise penalty for it⁴⁴.

⁴¹ (n10) 55.

⁴² (n10) 56.

⁴³ (n10) 59.

⁴⁴ Mark Segal, *Legislative Drafting Materials*, (Unpublished, 2011).

2.3.1 History of legislative drafting within the United Kingdom

Judges and conveyancers were primarily responsible for the early legislative drafting in England (beginning in the 15th century). The legalistic and wordy language they employed in the court documents and deeds of that era, which was rewarded by the document's length, was brought to it. These characteristics were highlighted starting in the seventeenth century, when judges used strict construction to eliminate the generality of statutory language that tended to favor the Crown in conflicts between the King and the Parliament. In response, Parliament aimed to achieve the same goals by outlining in great detail and restating repeatedly the specific topics that would have been addressed by laws that were written in general terms.⁴⁵

The majority of statutes were incomprehensible to lay readers in particular by the Nineteenth Century. Legislation typically suffered from a convoluted and ineffective framework, confusing language, inconsistent and complex modes of expression, and poor organization and structure. Long phrases with numerous topics condensed were found in blocks of continuous text (since each sentence required a separate enactment process). Additionally, they were composed in a legalistic and artificial language.⁴⁶

2.3.2 How drafting developed in the Nineteenth Century:

Early stages

⁴⁵ (n10) 78.

⁴⁶ (n10) 81.

Drafting was enmeshed in the significant legal changes of the nineteenth century. **Jeremy Bentham** sharply condemned the legislative flaws in the early years of that century, and a better approach was purposefully created to address them. The establishment of the Office of Parliamentary Counsel in the United Kingdom in 1869 marked the beginning of the work's progressive professionalization, which made it easier.⁴⁷

The Poverty Laws were significantly altered by **George Coode**, a private Lawyer who wrote on Legislative Expression (1845 & 1852). This was reprinted in **E. A. Driedger**, *The Composition of Legislation* (1976).

Sir **Henry Thring** (later Lord Thring), a barrister, formed the Office of Parliamentary Counsel and began drafting for the Home Office in 1861. *Practical Legislation*, (1877 & 1902) was written by him.

In the latter half of the century, Sir **Mackenzie Chalmer** drafted important commercial regulations that were largely embraced outside of the United Kingdom, such as the Sale of Goods Act, 1893.

The important contributions of Parliamentary Counsel and Sir Courtenay Ilbert, author of *Legislative Methods and Forms*, 1901, enabled a much better approach to common law formulation.

In the late 19th and early 20th centuries, each made a substantial contribution to a greatly enhanced method of common law drafting. Their essays and proposed laws had a significant impact on the British Empire at the time.

⁴⁷ (n10) 91.

2.3.3 Nineteenth Century Improvements

Sound ground work was provided by Coode. His contributions led to the provision of theoretical foundations for drafting practice for the first time. He specifically developed a framework for crafting legislative sentences, arguing that they should all have the same elements and demonstrating how they should be used consistently. Coode offered numerous recommendations aimed at creating more dependable drafting techniques. Among them are:

- i. The two most important qualities in drafting are clarity and simplicity. English usage conventions should always be followed;
- ii. Sentences should follow each other in a logical sequence, for example, in accordance with the chronological order of the events to which they relate;
- iii. Separate legal sentences should be used to provide for different persons or different events and there should be one sentence for each class of case, in which a distinct person is subjected to a distinct legal provision;
- iv. If a legal person is engaged in several actions in the same set of circumstances, the series of actions should be gathered in a single sentence, in the order in which they will occur;
- v. Avoid using arbitrary or artificial definitions for terminology. They can hide significant impacts rather than offering clarity of message;

- vi. Definitions should challenge attention by being placed before, not after, the matter to which they relate; defined terms should be identified by some distinguishing mark;
- vii. Provisions should be avoided; their only legitimate use is to create an immediate exception to a general proposition.

Subsequent Developments -

Later, a number of techniques that support Coode's recommendations were pioneered by legislative counsel, Lord Thring in particular. These included:

- a. Legislative sentence should be short, with only one sentence to a section (or, if the section is divided into subsection, to each subsection), this was facilitated by the statutory permission in 1850 to use sections and subsections (as exemplified by section 10 of the Model Interpretation Act in the supplementary Materials);
- b. There should be unity of purpose between the subsections of the same section, the main proposition in a section should be contained in the first subsection, qualifications and exceptions should be contained in subsequent subsections.
- c. Lengthy Acts should be divided into Parts and headings ascribed.
- d. Distinct matters, which have no connection with each other, should not be dealt with in the same Act.
- e. The simplest expressions found in ordinary composition will generally be adequate.
- f. Latin terms and unnecessary technical expressions should be avoided.

- g. The same term should be used to describe the same thing, a different term should be used to describe a different thing.⁴⁸

Twentieth century Developments -

During the latter half of the 20th century, many major common law jurisdictions appeared to drift away from the core principles of good legislative drafting. Previously criticized issues began to resurface, such as overly long and complicated statutes filled with dense wording, excessive detail, weak organization, and unclear terminology. This decline was likely influenced by the growing need to create expansive laws that addressed emerging areas of regulation or aimed to drive major social reforms. However, in some jurisdictions, these flaws were less pronounced, as effective drafting traditions introduced during the colonial period by Attorneys-General continued to shape legislative practices.⁴⁹

Principled drafting -

In response to these issues, it has been suggested that legislation should shift away from traditional drafting styles. Instead of lengthy and detailed explanations of rules, the focus should be on presenting the legal framework in a more straightforward and accessible way for those affected by or connected with the legislative scheme, it has been suggested that assertions of principle should be given more weight⁵⁰. The adoption of such a drastic change is not well documented. The main justification offered is that this strategy might result in less specific legislation regarding the obligations of those impacted, but as a result,

⁴⁸ (n10) 117.

⁴⁹ Alison Russel, *Legislative Drafting and Forms* (4th edn., Butterworth, 1938) 46.

⁵⁰ William Dale, *Legislative Drafting – A New Approach* (Butterworths, 1984) 38.

- i. That detail may need to be resolved by the courts or by an executive order or decision;
- ii. II. This could result in a reduction of the Legislature's authority, which is traditionally and constitutionally expected to resolve such matters.

Plain Language -

In the later part of the 20th century, plain language gained momentum across various forms of writing, including legislative drafting. This shift reflects a return to the principles once advocated by early reformers like Coode and Thring.

“It is strange that free societies should thus arrive at a situation where their members are governed from cradle to grave by text they cannot comprehend”⁵¹

Legislation which is difficult to understand is a derogation from the democratic right of a citizen to know what law he is governed⁵²

The movement known as the plain language drafting is a reaction to the excessive use legalese in legal documents. The movement initially focused on consumer related documents that were the concern of the common man and subsequently brought within its purview legislations as well.⁵³

The expression ‘Plain English’ has been adopted by movement in USA, the UK, Canada and Australia and has been used interchangeably with the expression plain language in

⁵¹ Francis Bennion, *Writing Laws: Making them easier to understand* (2nd edn., Oyes Longman, 1983) 8.

⁵² GC Thornton, *Legislative Drafting* (4th edn., Butterworths London, 1996) 50.

⁵³ According to Turnbull, rules for plain language were laid down at least as long ago as 1931, in the 3rd edition of Fowler’s *The King’s English* as follows: Prefer the familiar word to the far – fetched; Prefer the concrete word to the abstract; Prefer the single word to the circumlocution; Prefer the short word to the long; Prefer the Saxon word to the Romance.

jurisdictions where laws are bilingual. Although there are several methods, the goal is always the same: to make all official writing simpler by eliminating superfluous ambiguity and intricacy. Clear, straightforward, and direct language is known as plain language. This type of language enables readers to focus on the content rather than the complexities of the language. It would be difficult to satisfy the needs of every reader and listener if everyone chose to use language anyway they pleased.⁵⁴

One of the cardinal principles of plain language drafting is that a drafter should always ask himself ‘how will the draft look to the reader? This is necessary because readers do not the thought processes of the draftsman. Since the draftsman wrote it, he may find it easy to grasp, but to another person, it may be a complete mystery.

2.3.4 History of Legislative Drafting within Nigeria

The British legislative drafting style and methodology, as a colonial legacy, was bequeathed to most commonwealth countries, especially Nigeria. Therefore, it may be claimed that the introduction of colonial rule had a significant impact on Nigeria's legislative drafting history. The British Parliament passed laws for what is now Nigeria, and British drafters continued to create Nigerian laws until 1960, when Nigeria gained its independence.⁵⁵

Historically, it is important to note that before the return of democratic rule in 1999, there had been at least six legislative Houses in Nigeria; 1960 – 1964, 1964 – 1966 (First Republic); 1979 – 1983; October 1983 – December 1983 (Second Republic) and 1993 (aborted Third Republic). Since 1999, the country has successfully passed through four

⁵⁴ Augustin Mico, *Drafting and Plain Language* (Commonwealth Law Bulletin, 2013) 435 – 442.

⁵⁵ Hilary Onwe, *Groundwork of Legislative Drafting* (Snap Press (Nig.) Ltd, 2009) 3.

Legislative Houses both at the Federal and State levels of government which include: 1999 – 2003; 2003 – 2007; 2007 – 2011; 2011 – 2014.⁵⁶

For most part of this period, the drafting office was usually attached to both the Legislature and the Executive (Ministry of Justice). The drafting department's sole responsibility is to draft executive laws when it is connected with the Federal Ministry of Justice.⁵⁷

2.3.5 The Significance of Legislative Drafting

In the modern state, much social and institutional change has to be made or effected through written law instead of arbitrary oral pronouncements of government officials. This is one of the Rule of Law requirements that actions of government officials must be in accordance to laid-down written laws as opposed to arbitrary rules. In this regard, the Supreme Court of Nigeria held that it is requirement of the rule of law and a precondition for prevention of anarchy that the laws or legislation that govern the relationship between individuals, States and the different tiers of government within a Federation such as Nigeria must be '*reduced into writing*'.⁵⁸

This is both a rule of law in 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 no longer look to courts or to custom alone to adjust the system to the fast-changing demands made upon it.

⁵⁶ Maurice, Kanayo & Nancy, *A Comparative Analysis of the Interplay of Administrative and Political Structures* (Academia.edu, 2014) 27-35.

⁵⁷ (n10) 148.

⁵⁸ See *Attorney - General of Rivers State v Attorney – General of Akwa Ibom State* [2011] 8 NWLR (pt. 1248) 31 at 295.

In stressing the significance or importance of legislative drafting, some scholars have argued and identified poorly drafted legislation that gives unfettered discretion to government officials to corruptly enrich themselves and others is the root cause of underdevelopment within the third world.⁵⁹

Legislation is now a major factor in the transformation process. For instance, the Electoral Act of 2010 is essential when switching from one type of government or economic system to another. It is the means by which nations react to the growing demands brought about by their membership in the international system, such as the modifications made by the World Trade Organization (WTO) and international environmental protection agreements.

The main tools used to carry out planned development are laws and the organizations established under them. New legal institutions are necessary for development, and they must be suitable for the demands and conditions of the specific society. The quality of the instruments and the speed at which they are developed and implemented surely have an impact on this process. The quality of the prior research into the legal and practical implications of the policy options, the input from individuals with specialized legal skills and knowledge, and the successful integration of the new legislative scheme with the legal system as a whole are all factors that could affect success.

The purpose of legislation is to limit the likelihood of conflict, create efficient mechanisms for resolving the inevitable conflicts, and provide a framework for established legal

⁵⁹ Stefanou & Helen Xanthaki, *Manual in Legislative Drafting* (London Department for International Development (2005) 4.

relationships in a continuously changing world. Part of the reason for success is the caliber of the laws. That, in turn, is dependent on the competence, knowledge, and abilities of people in charge of its preparation.⁶⁰

Law alone is insufficient; in the field of legislative drafting, it is now acknowledged that the ultimate goal that a legislative drafter strives for while creating law is "effective" legislation. Effectiveness of legislation means that the legislation manages to introduce adequate mechanisms capable of producing adequate desired regulatory reports, this includes but is not limited to implementation, enforcement, impact and compliance. Furthermore, the tendency of being clear and easily recognized or understood is known as clarity or clearness. The instruments of efficacy are unambiguity, accuracy, and clarity.⁶¹ Yet many states are handicapped in making the legal changes they require by their lack of personnel and procedures needed to produce innovative legislation. Commonwealth countries, especially Nigeria, repeatedly report the scarcity of persons with skills in legislative drafting.

2.3.6 The National Assembly and Legislation in Nigeria

The drafting office, which is a part of the National Assembly, is in charge of completing government (executive) laws before sending them to the president for assent.⁶² It also draft members and private members' bills. In the Ministry of Justice, legal drafting departments are typically overseen by a Director. At the state level, the Director reports to the State

⁶⁰ (n10) 160.

⁶¹ Helen Xanthaki, *Drafting Manuals and Quality in Legislation* (Legisprudence, 2010) 111.

⁶² Adem Dereje Tesfaye, *Organising a Drafting Office* (NIALS, 2008).

Attorney General, while at the national level, they report to the Solicitor General or Permanent Secretary. This structure is also followed in the Federal Capital Territory and mirrored across the various state governments and legislatures.⁶³

Further, it has been convenient for drafters to belong to the Attorney-General's office in the Ministry of Justice because majority of bills sent to the drafters in the office of the federal and state Attorney-General constitute the first category of drafters in Nigeria.⁶⁴

The need for legislative drafters grew after Nigeria returned to democratic governance in 1999. The National and State Houses of Assembly now have more competent in-house drafters.⁶⁵ The advantage of the legislature having in-house drafters is that the Legislative Houses no longer depend solely on the office of the Attorney-General to draft Bills. Another development in Nigeria since 1999 is that a few private legal practitioners now provide consultancy services to law makers and draft Bills, for the law makers to sponsor as a Private Member Bill.⁶⁶

In Nigeria, legislative drafting offices operate within both the Executive arm (through the Ministry of Justice) and the Legislature. When situated within the Federal Ministry of Justice, the drafting department focuses solely on preparing executive bills. On the legislative side, the drafting unit attached to the National Assembly is responsible for finalizing government bills before they are forwarded to the President for assent. This unit also prepares bills sponsored by individual legislators or private members. At the Ministry

⁶³ Ibid.

⁶⁴ Imhanobe, *Principles of Legislative Drafting in Nigeria* (NIALS, 2014).

⁶⁵ Imhanobe, *Principles of Legislative Drafting in Nigeria* (NIALS, 2014).

⁶⁶ Ibid.

of Justice, these departments are led by a Director who reports to the State Attorney-General at the state level, and to the Solicitor General or Permanent Secretary at the national level.

The 36 states and Federal Capital Territory that make up Nigeria's federal system of government duplicated this pattern in both the state legislature and executive arm.⁶⁷

2.4 Theoretical Framework:

This research rests on an intersection of three complementary theories: institutional process theory, communicative clarity theory, and socio-legal effectiveness theory. Together, they form a lens through which the five stages of legislative drafting—instruction, analysis, design, composition, and scrutiny—can be re-imagined for Nigeria’s National Assembly.

- i. Institutional Process Theory⁶⁸ - Originating in organizational sociology, this theory holds that the structure of a procedure shapes the quality of its outputs more powerfully than individual effort alone. March and Olsen’s “logic of appropriateness” suggests actors behave according to scripts encoded in institutional routines. If the drafting sequence embeds flawed routines, late stakeholder input, insufficient feedback loops, defects propagate downstream into the statute book. By mapping each stage as a discrete but interlocking module, the framework treats reform as an exercise in re-engineering process flows rather than merely upgrading stylistic technique.

⁶⁷ Suzzie, Onyeka Ofuani, *Organisation of a Legislative Drafting Office* (NAILS, 2002); *International Journal of Legislative Drafting* (NAILS, 2012) 89.

⁶⁸ March James & Olsen Johan, *The New Institutionalism – Organisational Factors in Political Life* (American Political Science Review, 1984) 734-749.

- ii. Communicative Clarity Theory⁶⁹ – Rooted in linguistics and cognitive psychology, this strand maintains that comprehension hinges on cognitive load, text coherence, and audience expectation. Plain-language advocates such as **Butt** contend that legal texts achieve authority only when citizens can readily parse them. Yet clarity cannot be grafted on at the composition stage alone; it must inform the initial instructions, guide analytical structuring, and drive iterative testing during scrutiny. Hence, communicative clarity operates as a longitudinal thread binding the five stages, ensuring that improvements in wording are reinforced by corresponding gains in conceptual architecture.
- iii. Socio-Legal Effectiveness Theory⁷⁰ – Drawn from socio-legal studies, this perspective emphasises the gap that often opens between law on the books and law in action. Fuller’s “internal morality of law” and later empirical work by **Snyder** show that enforceability depends on coherence with local administrative capacity and social norms. In Nigeria’s context, marked by diverse legal cultures and varying enforcement capabilities, drafting reforms must incorporate feedback on real-world implementability. Placing effectiveness theory inside the scrutiny stage ensures that each Bill is stress-tested against practical enforcement scenarios before enactment.

⁶⁹ Grice Herbert Paul, *Logic and Conversation* (Peter Cole & Jerry Morgan edn., Academic Press, 1975); *Syntax & Semantics* (vol. 3, Academic Press, 1975).

⁷⁰ Snyder Francis, *The Effectiveness of European Community Law – Institutions, Processes, Tools and Techniques* (Modern Law Review 56(1), 1993) 19-54.

Integrative Logic – These theories interlock as follows: institutional process theory diagnoses structural bottlenecks; communicative clarity theory supplies design criteria for text; socio-legal effectiveness theory verifies that the re-engineered pipeline yields rules that can be applied without distortion. The framework thus positions drafting not as a linear relay, but as a dynamic system in which each stage both influences and is reshaped by the others. Grounding the study in this tripartite lens enables a critique that moves beyond stylistic commentary, offering a blueprint for procedural reform tailored to Nigeria’s legislative environment.

2.4.1 Thornton’s five Stages of Drafting

Instructions - According to Thornton, the starting point in the drafting process is gaining a full understanding of the policy. This begins with early discussions between the policy sponsor and the drafter, typically expressed through the drafting instructions. These instructions provide a detailed outline of the proposed policy framework and serve as a vital tool for helping the drafter grasp the purpose and objectives behind the proposed legislation⁷¹. Another important way for the drafter to understand the proposed policy is through direct discussions and consultations with the policy sponsor. These interactions help clarify any uncertainties and ensure the drafter fully understands the intentions behind the legislation⁷². Though not generally recognized, a deep and comprehensive conversation with the instructing officer is an essential part of helping the drafter fully grasp the proposal during the understanding stage of the drafting process. In addition to offering the drafter a

⁷¹ Helen Xanthaki, *Thornton’s Legislative Drafting* (5th edn., Bloomsbury, 2013) 146.

⁷² Ibid.

chance to address any ambiguities, this type of conversation serves as a control mechanism for how well the legislative proposal in the instructions has been communicated to the drafter.

What and what are expected in the Instructions to aid Understanding? The intended substance of drafting instructions is prescribed by Thornton's four main principles:

- (i) Background information on the problem or mischief being addressed;
- (ii) The purpose(s) of the proposed legislative framework;
- (iii) The means by which those purposes can be achieved; and
- (iv) The impact of the proposed legislation on existing legislation

The drafting instructions should clearly outline the specific issue or societal problem that the proposed legislation aims to address. This may be supported by prior activities like consultations, research reports, or foundational work such as findings from an advisory body or public inquiry⁷³.

The instructions must also clearly explain the goal of the proposed law, that is, the specific result the sponsors hope to achieve. If this purpose isn't well defined, the drafter may struggle to know how to begin or how to shape a law that will be effective and well-structured⁷⁴.

After stating the purpose of the proposed law, the instructions should clearly outline how the intended goals will be achieved. This includes explaining how any administrative body

⁷³ Xanthaki (n 71) 148.

⁷⁴ Xanthaki (n 71) 149.

will be created, what its structure will look like, the roles it will play, and the powers it will have. If the law introduces new rules people must follow, the instructions must also show how compliance will be enforced and how violations will be handled.

Additionally, the instructions should describe how the proposed law may affect existing laws, whether they are statutes or common law. It should explain how the new legal framework will fit into the current system and highlight any legal, social, or administrative arrangements that may conflict with or be disrupted by the new law.

Consultation - is the second key method for building understanding. It is essential for clear communication and helps the drafter improve the quality of the legislation as work progresses. If the instructions lack sufficient detail, the drafter and the sponsoring team must engage in open discussion to make sure all necessary information is properly shared and understood.

Analysis – After gaining a thorough knowledge of the proposal, the drafter needs to take some time to think it over and evaluate it. According to Thornton, the specific actions that should be performed in this analysis are:

- (i) Existing laws relating to subject matter;
- (ii) The areas of special responsibility that the new scheme will fall under;
- (iii) The practicality of the scheme in the real world⁷⁵.

⁷⁵ Xanthaki (n71) 151.

According to Thring, the first thing a drafter should do after receiving instructions is to familiarize himself with all existing laws pertaining to the Act which is to be prepared⁷⁶. This step includes examining both statutory laws and common law principles. Thornton also recommends that during this stage of analyzing the proposal, the drafter may look at similar laws in other countries or jurisdictions for useful guidance and insights⁷⁷. This is especially important when the proposal introduces an entirely new framework that has not yet been explored within the jurisdiction.

Regarding areas of special responsibility, the drafter must carefully assess whether the proposed legislation complies with key constitutional principles, especially because laws often affect people's rights and personal freedoms by their very nature⁷⁸. Draft laws that affect individual rights like access to justice, fair hearing, and the principles of natural justice must be carefully considered⁷⁹. Such laws should only be enacted within the boundaries of the constitution. If these provisions are not carefully examined, they risk being overturned or ruled as inconsistent with human rights laws.

In light of the above, a legislative drafter in Nigeria, while analyzing the instructions, is to determine first, if the legislative proposal contained in the instructions is not in conflict with the Supremacy clause of the Constitution⁸⁰. Where there is a conflict, the drafter must

⁷⁶ Instruction for Draftsman (Alberta Law Journal, 2022).

⁷⁷ Xanthaki (n 71) 152.

⁷⁸ Ibid.

⁷⁹ Xanthaki (n 71) 153.

⁸⁰ CFRN 1999 S 1.

note the obstacle and advise the instructor accordingly in a written form, explaining the unconstitutionality of the legislative proposal.

Second, the drafter is to determine which tier of government has legislative power as provided in the Constitution to make law on the subject matter of the instruction or legislative proposal⁸¹. If the drafter determines that the proposal is Ultra Vires the powers of the instructor, a written advice, also explaining to the instructor the unconstitutionality of the proposal is required.

Third, the drafter must also determine if the proposal is not in conflict with the fundamental rights guaranteed in the Constitution⁸². The drafter must also ensure that the proposal does not conflict with other specific provisions of the Constitution on the subject matter, including Schedules⁸³. For instance, if it is a proposal that seeks to alter a section of the Constitution, the drafter has to determine whether the proposal is in conformity with the procedures provided in the Constitution for alteration.

Designing the template - the drafter devises a legislative draft before composing the individual provisions. In other words, the drafter designs the legislative template which will involve structuring the legislative text in a way that facilitates understanding. The Bills are to be logically arranged and sections of a statute that are intended to be permanent should appear before those meant to be temporary. Additionally, a table of contents listing

⁸¹ CFRN 1999 4(3) (4) & (5).

⁸² CFRN 1999 (cap 4).

⁸³ CFRN 1999 (2).

the section headings and titles should be included at the beginning of the bill, though not part of the Bills but is included for ease of reference.

These are some of the provisions that are included in the draft Bill –

Preliminary provisions - Long title, Preamble, Enacting clause, Short title, Commencement, Duration, Application, Purpose clause, Definitions and Interpretation.

Principal provisions – Substantive provisions and Administrative provisions.

Miscellaneous provisions – Schedule, Savings and Transitional provisions.

It is important for the drafter to take this stage serious just like the previous stages because every section of a law builds upon the one before it, with its structure often shaped by the design and content of the preceding provision.

Composing the draft - At this stage, the drafter must carefully apply the core principles of legislative writing and follow the standard methods used in Nigeria for expressing different types of legal rules. Simply put, the drafter needs to understand the typical structure and style of legislative sentences.

It is advisable to use the present tense and active voice, the correct use of “may” and “shall” and “must” or present tense to express command and gender-neutral language.

Reviewing/Scrutinizing the draft - it is important to review or scrutinize the draft to enhance the technical quality of legislation; it ensures accountability and facilitates policy influence.

Scrutiny can take place within the drafting team, and externally, by interested Ministries and affected agencies.

2.4.2 Legislative Models

These are the different approaches or frameworks used to understand, develop and draft legislation. Typical legislative models include the following:

Contract Model - this is a collaborative approach where stakeholders negotiate and agree on legislative terms.

Public Interest Model - the overall welfare and public interest are given priority in this concept.

Private Interest Model - this model prioritizes individual rights and interest.

Participatory Model – a model involving citizens and stakeholders in the legislative process.⁸⁴

2.4.3 Stakeholder Theory

This is conceptual framework used to identify, analyze and prioritize the interest of various groups or individuals who have a stake in an organization, project or policy. It was first introduced by **Edward Freeman** in 1884. Some of the key principles of this theory are identification, interests, prioritization, engagement and responsibility.⁸⁵

2.4.4 Drafting Principles and Techniques

The most important techniques of legislative drafting is simplicity of style. Lord Simon says, “Desirably the language of legislation should be as near to ordinary speech as precision permits”. Mr. **Ian Percival** puts it in another way, “whatever possible, what is

⁸⁴ Tolulope Makinwa-Adeniyi, *Participatory Model for Inclusive Legislations of Social Enterprises in Nigeria* (Policy and Legal Advocacy Centre(PLAC), 2024).

⁸⁵ Robert Edward Freeman, *The State of the Art* (Cambridge University Press, 2010) 26.

intended should be set out in the simplest term, in the language nearest to that which would be used by those affected by it. The Statute Law Society suggested that clear grammar and sentence structure should be a top priority. The language used should be straightforward, and the sentences should be kept fairly short for easy understanding.⁸⁶ However, a draftsman should never be pressured to choose simplicity at the expense of clarity or certainty, as doing so might undermine the true purpose or intention of the law and the court may hold the Act which was meant to imply one thing which actually means another thing instead.⁸⁷

⁸⁶ Renton Committee Report, *The Preparation of Legislation* (Her Majesty's Stationery Office, 1985) 164.

⁸⁷ Abdul Baqi Kafaltiya, *Pleadings, Drafting and Conveyancing* (2nd edn., University Law Publishing, 2017) 218.

CHAPTER THREE

CRITICAL EVALUATION OF THE STAGES OF LEGISLATIVE DRAFTING VIS A VIS GUIDELINES TO ENHANCE THE EFFECTIVENESS OF ACTS OF THE NATIONAL ASSEMBLY

Legislative drafting is not merely a technical exercise in arranging words into legal form; it is a deliberate, structured process that transforms policy intentions into clear, enforceable laws. In the context of the Nigerian National Assembly, the quality of legislative output depends heavily on the proper observance of each stage in the drafting process. This chapter undertakes a critical evaluation of these stages, ranging from instructions to scrutiny, against both theoretical standards and practical realities. It further examines the guidelines necessary to strengthen the effectiveness of Acts, drawing insights from established drafting principles, comparative practices, and institutional experiences. By analysing the interplay between procedure, precision, and policy objectives, the chapter seeks to identify where gaps occur, why they persist, and how they can be addressed to ensure that Nigerian legislation meets both domestic governance needs and international drafting benchmarks.

A. Instruction:

Instruction refers to the preliminary phase where policy objectives are defined, and detailed instructions are provided to the legislative drafter. In Nigeria, instructions often come from policymakers, ministries, or agencies proposing the legislation.⁸⁸ However, the legislative

⁸⁸ CFRN 1999 4(2); 5(1)(a).

drafters often encounter challenges that may reduce the effectiveness of these legislations.

Some of these challenges are -

- a. Ambiguity in Instructions – ambiguity is one of the significant challenges of instructions in legislative drafting, as unclear or vague language can lead to multiple interpretation, confusion and potential litigation. See the case of *Attorney General of Lagos State v Attorney General of the Federation*.⁸⁹ This case highlights the importance of clear and well-delineated instructions during drafting to ensure laws respect the constitutional distribution of powers. Ambiguities in the drafting instructions for laws governing taxation led to jurisdictional disputes. See also the case of *Global Excellence Communications Ltd. & Ors v Donald Duke*.⁹⁰ The Court emphasized in this case that clear and precise instructions are necessary to guide drafters in addressing constitutional safeguards and balancing competing interests.

Limited Stakeholder Input - The initial instruction phase in Nigeria sometimes lacks broad consultation with affected parties. See the case of *Okedara v Attorney General of the Federation*.⁹¹ In this case, the lack of stakeholder engagement during drafting resulted in provisions that were overly broad and subject to varying interpretations. Since Section 24(1) of the Cyber Crime Act, 2015 was judged to be excessively wide and vulnerable to differing interpretations, the Court of Appeal rejected the challenge to its constitutionality by the Appellant, Solomon Okedara.

⁸⁹ (2004) 18 NWLR (Pt. 904) 1 SC.

⁹⁰ (2007) 16 NWLR (Pt. 1059) 22.

⁹¹ (2019) CA/L/CS/937/2017.

- b. Political Influence - Instructions may be shaped by political considerations, leading to bias or misalignment with public interest.

B. Analysis:

Analysis involves examining the policy objectives, the legal environment, and potential impacts of the proposed legislation. It is critical for identifying gaps, conflicts with existing laws, and practical enforcement challenges.⁹² Some of the notable challenges encountered by the legislative drafters at this stage are -

Inadequate Research - Insufficient legal and policy analysis can result in overlapping or contradictory laws. See the case of *Attorney General of Abia State & Ors v Attorney General of the Federation*.⁹³ The absence of thorough analytical work during the drafting process led to conflicts between constitutional provisions and the enacted legislation. Thus, the Supreme Court highlighted the need for comprehensive analysis to ensure legislative consistency with constitutional mandates. See also, *Ugwu v Ararume*.⁹⁴ Ambiguities in the Electoral Act led to disputes over the legality of party nominations thereby causing failure to analyze and address potential procedural gaps during drafting which resulted in litigation and delayed electoral processes. The Court here, highlighted the importance of examining procedural implications thoroughly in legislative drafting.

- a. Resource Constraints - Limited access to comprehensive legal databases and expert opinions can weaken the analysis phase.

⁹² Ian Mcleod, *Principles of Legislative and Regulatory Drafting* (Hart Publishing, 2012) 111.

⁹³ (2004) 18 NWLR (Pt. 904) 1 SC.

⁹⁴ (2007) 12 NWLR (Pt. 1048) 367 SC.

- b. Time Pressure - drafters in Nigeria often face tight deadlines, reducing the time available for thorough analysis.

Guidelines to enhance effectiveness -

- a. Allocate sufficient time and resources for in-depth analysis.
- b. Utilize technology, such as legal databases, to cross-reference existing laws and international treaties.
- c. Conduct comparative analysis with similar legislation in other jurisdictions for best practices.

C. Designing:

Designing involves creating the framework or structure of the legislation. It determines the arrangement of provisions, definitions, and procedural elements. Some of the challenges discovered that the legislative drafters encounter at this stage are -

Inconsistent/Poor Structure - Some Acts of the National Assembly lack logical organization, making them difficult to interpret. See the case of *Attorney General of Ondo State v Attorney General of the Federation*.⁹⁵ This case bothers on the dispute over the constitutionality of the Corrupt Practices and Other Related Offences Act, particularly its application to states. The Act's design failed to consider federalism principles, leading to conflicts about jurisdiction. Consequently, effective legislative design must align with constitutional structures and principles to avoid overreach.

⁹⁵ (2002) 9 NWLR (Pt. 772) 222 SC.

- a. Complexity - Overly complex structures can hinder understanding and implementation.
- b. Insufficient Flexibility - Rigid designs fail to anticipate future changes or emerging challenges.

Guidelines to enhance effectiveness –

- a. Follow standardized templates for legislation to ensure consistency and ease of navigation. Prioritize flexibility by delegating detailed procedural elements to regulations or subsidiary legislation.
- b. Ensure a logical arrangement of provisions, such as grouping related topics and including clear headings.

D. Composition:

The actual writing of the legislative language is known as composition. It involves translating policy into precise, clear, and enforceable legal language. Poor composition, including vague criteria can lead to legal disputes about the constitutionality of a provision. Therefore, legislative composition should anticipate potential conflicts and provide clear and enforceable standards. See the case of *Action Congress of Nigeria (ACN) v. Independent National Electoral Commission (INEC)*.⁹⁶ This case bothers on challenges to the drafting of provisions in the Electoral Act relating to the registration and deregistration of political parties. Some of the challenges at this stage discovered are -

⁹⁶ (2013) 13 NWLR (Pt. 1370) 161 SC.ssssss

- a. Ambiguity - Poorly drafted provisions can lead to varying interpretations, resulting in litigation or implementation challenges.
- b. Over-reliance on Legalese - Excessive use of archaic or technical terms can alienate the public and non-experts.
- c. Inconsistencies - Lack of harmonization in terminology and phrasing across sections creates confusion.

Guidelines to enhance effectiveness -

- a. To improve accessibility for all parties involved, use language that is simple and straightforward.
- b. Define key terms and use them consistently throughout the legislation.
- c. Review and test the draft for ambiguity by involving legal and non-legal experts.

E. Scrutiny:

Scrutiny involves reviewing and revising the draft legislation to ensure it meets legal, procedural, and policy objectives. This includes internal review, legislative committee scrutiny, and public consultation. See the case of *Dangana v Usman*.⁹⁷ Scrutiny must ensure procedural provisions are unambiguous and practical.

Challenges -

- a. Limited Public Engagement - Acts of the National Assembly often undergo minimal public consultation, reducing transparency and inclusiveness.
- b. Political Expediency - Pressure to pass laws quickly can limit the depth of scrutiny.

⁹⁷ (2013) 6 NWLR (Pt. 1349) 50 SC.

- c. Judicial Overload - Poorly scrutinized laws often result in litigation, increasing the burden on the judiciary.

Guidelines to enhance effectiveness -

- a. Institutionalize robust public consultation processes to gather feedback on drafts.
- b. Strengthen the role of legislative committees to conduct detailed reviews.
- c. Employ external experts for independent scrutiny, focusing on technical, legal, and societal implications.

3.1 Drafting challenges identified in the Employees' Compensation Act, 2010

The Employees' Compensation Act is a law that sets up a Social Insurance Scheme aimed at supporting workers who get injured, fall ill, or become disabled due to accidents that happen while they are doing their job, whether at their regular workplace or somewhere else during the course of their duties. It also ensures that compensation is given to the next-of-kin of any employee who loses their life while carrying out work-related tasks.⁹⁸

While the Act has contributed significantly to workers' protection, several challenges undermine its effectiveness. These challenges, along with relevant authorities or provisions, are detailed below:

Ambiguities and Unclear provisions of ECA, 2010:

Definition of the word "employee"

"employee means a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis

⁹⁸ Employees' Compensation Act, 2010 (see the Long title).

and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Government agencies and in the formal and informal sectors of the economy”⁹⁹

With regards to the principles of Legislative Drafting –

Clarity – the definition is lengthy and uses complex language, making it challenging to understand. The use of phrase like ‘whether on a continuous, part-time, express or oral’ may cause confusion.

Comprehensiveness – the definition may not adequately address modern work arrangements such as gig economy workers or freelancers and Interns. The exclusion of certain categories of workers such as Agricultural workers may be seen as inconsistent international labor standards, hence paving way for imminent scrapping of this law.

Vague definition of “injury” ‘includes bodily injury or disease resulting from an accident or exposure to critical agents and conditions in a workplace’. The Act does not specify what critical agents and conditions are thereby creating confusion and limited access to compensation.

Generally, the content of the Employees’ Compensation Act, 2010 is an elaborate mode of expression. Long paragraphs often included lengthy sentences where multiple issues were packed together without clear separation.¹⁰⁰ The general view regarding language is that legislative statements in the most of the Acts are in the form of long sentence with a number

⁹⁹ Employees’ Compensation Act, (2010)) 73.

¹⁰⁰ Employees’ compensation Act (2010) 12 & 17.

of subordinate clauses. But it is argued that if the same thought can be expressed in a number of short sentences that will be easy to understand. Therefore, it is advised that the draftsman should aim at keeping sentences short.¹⁰¹ But this will also lead to some other problems. For example, if we break a long complex sentence into number of simple sentences, then it will lead to have more longer sections or sub-sections. But Sir John Fiennes thinks, “shorter sentences are easier in themselves, and it would probably help overall to have them shorter, but of course you are then faced with having to find the relationship that sentence and another sentence...”¹⁰²

Delayed Compensation and Bureaucratic Hurdles - Employees often face significant delays in receiving compensation due to procedural inefficiencies and bureaucratic red tape. Section 14 outlines the process for claiming compensation, but the lack of strict timelines leads to delays. The implication of this is that it leads to prolonged disputes and delayed payments that exacerbate the financial distress of injured employees. The Supreme Court of India, in *V.M. Salgaocar & Bros. Pvt. Ltd. v Commissioner of Income-Tax*,¹⁰³ highlighted the need for expeditious disposal of claims.

Inadequate Penalties/enforcement for Non-Compliance - The penalties for employers failing to comply with the Act are insufficient to deter violations. Considering this provision which prescribes general penalty for non-compliance “*Any person who contravenes any provision of this Act for which no specific penalty is provided, commits*

¹⁰¹ Ian Mcleod, *Principles of Legislative and Regulatory Drafting* (Hart Publishing, 2012).

¹⁰² Renton Committee Report, 64.

¹⁰³ (1992) 198 ITR 738 (Karnataka).

*an offence and shall be liable on conviction to a fine of ₦20, 000 for the first case of non-compliance or imprisonment for a term not exceeding 1 year or ₦100, 000 for every subsequent case of non-compliance or both such imprisonment and fine*¹⁰⁴ and penalty for non-payment of assessment, *“if an assessment is not paid when required, the Board may assess a penalty in an amount equal to 10 per cent of the unpaid assessment or value of the security required, the payment of which may be enforced in the manner as the payment of an assessment”*¹⁰⁵ which are not proportionate to the harm caused. Inadequate enforcement tools give employers the confidence to flout legal requirements. Comparatively, penalties under the Occupational Safety and Health Act¹⁰⁶ in the U.S. are significantly higher, ensuring better compliance.

Inadequate awareness among Stakeholders – Employers and employees often lack awareness about their rights and obligations under the Act, partly because it does not mandate campaigns or trainings programs. This results in underreporting of workplace injuries and minimal claim being filed.

The Act also did not make provision for occupational diseases as a result of exposure to new age workplace hazards.¹⁰⁷ This means that Employees suffering from occupational disease may struggle to prove their condition that falls within the Act’s purview.

¹⁰⁴ Employees’ Compensation Act (2010) 73.

¹⁰⁵ Employees’ Compensation Act (2010) 46.

¹⁰⁶ (1970).

¹⁰⁷ ECA, 2010 (1st Schedule).

3.2 Drafting challenges identified in the New Pension Reform Act, 2014

Since the Pension Reform Act of 2014 was passed, Nigeria's pension administration has made great progress. However, there are notable drafting challenges related to ambiguities in definitions, conflicting provisions, inadequate regulatory clarity, and enforcement mechanisms. These challenges often result in legal and operational uncertainties for pension contributors, administrators, and regulators. Addressing these drafting challenges through amendments, clarifications, and more robust enforcement mechanisms would strengthen the Act and enhance the overall effectiveness of Nigeria's pension system and also avoid scrap or repeal.

One major drafting challenge in the Pension Reform Act, 2014 lies in ambiguous definitions and terminology, particularly regarding the scope of the Act and its application.

Ambiguity - The term "employee" under the Act is defined as an individual employed in the public service or private sector, but the specific criteria for inclusion or exclusion of certain categories of workers, such as those working on temporary contracts or part-time employees, can be unclear.

Pensionable employment: The Act provides guidelines on which employees should be enrolled in the pension scheme but lacks clear specifications for certain workers in non-traditional employment sectors or industries, which could lead to interpretative challenges.¹⁰⁸ This section highlights that the pension plan applies to both public and

¹⁰⁸ See Section 1(3) of the Pension Reform Act, 2014.

private sector employees. However, the challenge lies in interpreting which categories of workers fall under this definition.

Inconsistency - Another issue in the Pension Reform Act, 2014 is the presence of conflicting provisions that may lead to inconsistent implementation. Some provisions in the Act contradict or fail to harmonize with other statutory provisions, creating confusion in interpretation.

Example:

- i. The mandatory contribution of 18% (comprising 8% from the employee and 10% from the employer) may conflict with the understanding of “voluntary contributions” that individuals or employers may wish to make above the prescribed minimum.¹⁰⁹
- ii. Section 16 allows for voluntary contributions, but some organizations or individuals might misinterpret this provision when coupled with the compulsory contribution structure, leading to legal disputes. There may be confusion about whether voluntary contributions are capped or if they are subject to the same regulatory conditions as mandatory contributions.¹¹⁰

Challenges in Regulatory Framework - The Act mandates the establishment of regulatory authorities such as the National Pension Commission (Pension Commission), but there are

¹⁰⁹ See Section 4(1) of the Pension Reform Act, 2014.

¹¹⁰ Pension Reform Act, 2014 4(1) & 16 (the contribution for any employee to which this Act applies shall be made in the following rates relating to his monthly emoluments – (a) a minimum 10 per cent by the employer and (b) a minimum of eight per cent by the employee].

concerns about the regulatory framework's clarity and the allocation of duties between the Pension Commission and other organizations, such as the Federal Inland Revenue Service (FIRS) or the Central Bank of Nigeria (CBN). Pension Commission's oversight is critical in the management of pension funds, but there are concerns about its ability to enforce compliance in certain private sector organizations, especially in small and medium enterprises (SMEs). There is also an issue with the administrative capacity of Pension Commission, especially in its oversight of private pension schemes, as seen in the challenges with Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs) in terms of ensuring compliance. The Pension Reform Act, 2014 gives Pension Commission wide-ranging powers but lacks clear guidance on its enforcement mechanisms, especially in situations involving defaulting employers or inadequate contributions by workers.¹¹¹

Lack of Clarity - While the Act generally stipulates conditions for retirement benefits and pension access, some provisions remain ambiguous regarding how workers can withdraw their pensions or when the benefits are accessible. This can create confusion about how retirement benefits can be claimed and the role of various pension administrators in processing these claims. For instance - The mode of pension disbursement and how it applies to self-employed individuals, informal sector workers, and those who experience early retirement due to health or disability conditions, is not always clear. See Section 7(2)

¹¹¹ See Section 23 (the Commission shall – (a) regulate and supervise the Scheme established under this Act and other Pension Schemes in Nigeria...).

and Section 8(1)¹¹²: These sections detail how retirement benefits are to be accessed, but they fail to clearly address provisions for early withdrawal in situations such as disability or illness, which might be prone to misinterpretation.

Another challenge relates to the management of pension funds, particularly the investment of pension contributions. The Act stipulates that pension funds should be invested in a manner that ensures growth, but there are concerns over the lack of clear guidelines on how this should be done, and the potential for mismanagement or misuse of pension funds.

The lack of clear investment guidelines for Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs) could lead to speculative investments that may not be in the best interest of pension contributors, particularly in the context of Nigeria's volatile economic environment.¹¹³ This section provides for the investment of pension funds, but there are concerns about supervision and the transparency of these investments, leading to potential financial risks.

Enforcement and Compliance - Another problem is the enforcement of pension contributions. While the Act has provisions for penalties and sanctions for defaulting employers, there are concerns about the efficacy of these enforcement mechanisms. Many

¹¹² Pension Reform Act, 2014 (S. 7(2) “where an employee voluntarily retires, disengages or disengaged from employment as provided for under sub-section (2) of section 16 of this Act, the employee may with the approval of the Commission, withdraw an amount of money not exceeding 25 per cent of the total amount credited to his retirement savings account, provided that such withdrawals shall only be made after four months of such retirement or cessation of employment and the employee does not secure another employment”) and (S. 8(1) “where an employee dies, his entitlement under the life insurance policy maintained under subsection 5 of Section 4 of this Act shall be paid by the underwriter to the named beneficiary in line with Section 57 of the Insurance Act, 2003”).

¹¹³ Pension Reform Act, 2014 (S. 85).

employers, especially in the informal and unorganised sectors, continue to ignore pension remittances, and enforcement is often not robust enough to address this. Employers who fail to comply with the mandatory pension contributions may face penalties, but enforcement can be weak, particularly in the private sector or in small firms. These sections discuss penalties for non-compliance, but the level of enforcement by Pension Commission and other relevant authorities remains a significant challenge.¹¹⁴

3.3 The Absence of Consultation in Legislative Drafting and its Impact on the Effectiveness of Enacted Legislation:

Consultation in legislative drafting refers to the systematic and deliberate engagement of diverse stakeholders, such as affected communities, experts, civil society organizations, industry representatives, and the general public, during the formulation, development and drafting of laws. It ensures that the perspectives, experiences, and concerns of all relevant groups are incorporated into the legislative process.

3.3.1 Key Aspects of the Absence of Inclusive Consultation:

Lack of Stakeholder Consultation - failure to involve relevant stakeholders leads to a disconnect between the legislation and the practical challenges faced by the affected population. For instance - excluding workers' unions from consultations on labor laws results in laws that inadequately address workplace realities. In the case of *Attorney*

¹¹⁴ (“Any person who contravenes any of the provisions of this Act commits an offence and where no penalty is prescribed, shall be liable on conviction to a fine of not less than N250,000 or to a term not less than one-year imprisonment or to both fine and imprisonment”) and (“Any pension Fund Administrator or Pension Fund Custodian or person or body who misappropriates or diverts pension funds commits an offence under this Act and is liable on conviction to a fine of an amount equal to three times the amount so misappropriated or diverted or to a term of not less than 10 years imprisonment or to both fine and imprisonment”).

*General of Abia State v Attorney General of the Federation*¹¹⁵ that revolved around the derivation formula in revenue allocation under the 1999 Constitution of the Federal Republic. Several states in the Niger Delta felt excluded from the process of drafting and amending revenue-sharing laws. The Supreme Court emphasized the need for laws and constitutional provisions to reflect the interests of all regions and stakeholders. The exclusion of key stakeholders contributed to tensions and disputes over resource control, highlighting the consequences of inadequate consultation.

Over-reliance on Bureaucracy - Legislative drafting often occurs within government departments with limited external input, leading to a top-down approach. This restricts the scope of perspectives, resulting in narrow or overly technical solutions. In a decided case of *Bamaiyi v Attorney General of Federation & Ors*¹¹⁶ that dealt with administrative and legislative processes in the criminal justice system. The accused argued that the procedural inadequacies of the relevant laws affected fairness and transparency. It underscored the need for broader consultation with legal practitioners, human rights activists, and judicial stakeholders during legislative drafting to enhance the fairness of criminal justice laws.

Insufficient Public Participation - Public hearings and debates are sometimes treated as procedural formalities rather than meaningful engagements. Without active public participation, laws may miss societal trends, cultural nuances, or region-specific challenges. The Supreme Court challenged the lack of public participation and transparency in legislative decision-making, particularly regarding the passage of

¹¹⁵ (2002) 6 NWLR (Pt. 763) 204.

¹¹⁶ (2001) CLR 7 (L) (SC).

appropriation bills¹¹⁷. The case drew attention to the need for public consultation to ensure that budgetary and legislative processes are transparent and representative of societal needs.

Exclusion of Marginalized Groups - Vulnerable populations, including women, disabled persons, and indigenous communities, are often left out of the consultation process. As a result, legislation may inadvertently perpetuate inequities or create new barriers for these groups.¹¹⁸

3.3.2 Impacts of Consultation on the Effectiveness of Enacted Legislation:

Mismatch Between Law and Reality: The mismatch between law and reality is a significant challenge affecting the effectiveness of enacted legislation in Nigeria, especially the Acts of the National Assembly. This mismatch occurs when laws are enacted without considering the social, economic, and cultural context of the society, leading to a disconnect between the law and the reality on ground. Laws that are not informed by real-world challenges often prove impractical or unenforceable, just like environmental regulations that ignore industry input may impose unfeasible standards, resulting in widespread non-compliance. The court recognised and emphasized the failure of existing laws to address the concerns of local communities, stressing the need for consultation with environmental experts and affected populations during legislative drafting¹¹⁹. Another instance is Anti-corruption laws in Nigeria (like EFCC Act), despite enactment of these

¹¹⁷ *Olisa Agbakoba v Attorney General of the Federation & National Assembly* (2021) JELR 109393 (CA).

¹¹⁸ Ruth Burchianti, *The Importance of Stakeholder Engagement in Legislative Drafting* (Unpublished, 2018).

¹¹⁹ *Centre for Oil Solution Watch v Nigeria National Petroleum Corporation* (2019) 5 NWLR (Pt. 1666) 518.

laws, corruption remains a significant challenge in Nigeria due to inadequate implementation and enforcement.

Lack of Public Ownership: The lack of public ownership is a significant challenge affecting the effectiveness of enacted legislation in Nigeria. Public ownership refers to the extent to which citizens feel invested and committed to the laws that govern their society. When stakeholders feel excluded from the drafting process, they are less likely to support or comply with the law. In the aspect of tax, Nigerians do not see the benefit of paying taxes, leading to widespread tax evasion.¹²⁰ Citizens may not also take ownership of environmental laws, leading to littering, pollution and other environmental degradation. The Court emphasised that inclusive consultation enhances transparency and accountability, which are critical for effective legislation¹²¹. This case¹²² focused on the failure to comply with provisions of the Freedom of Information Act (FIO Act) regarding public access to legislative processes.

Increased Litigation and Legal Challenges - These are significant obstacles affecting the effectiveness of enacted legislation in Nigeria partly due to laws that are poorly drafted, leading to ambiguity and vagueness, which can result in conflicting interpretations. This may lead to delayed justice and increased administrative burden since the Court may need to step in to interpret unclear provisions. The Petroleum Industry Act, 2021 (PIA) faced criticism for insufficient consultation with host communities in the Niger Delta, despite being touted as a landmark reform in Nigeria's oil sector. Many local stakeholders felt that

¹²⁰ Oyesola Animashaun & Howard Chitimira, *An Analysis of the Statutory measures adopted to curb tax evasion in Nigeria after COVID-19 pandemic* (De Jure Law Journal, 2023)

¹²¹ Femi Falana v Attorney General of Federation (No 1) (44).

¹²² Ibid.

their concerns, such as fair allocation of resources and environmental protection, were inadequately addressed¹²³. The perceived exclusion led to protests and calls for amendments, undermining the law's acceptance and effectiveness. The impact of inclusive consultation on the effectiveness enacted legislation is also seen in the Land Use Act which was enacted with minimal consultation with local landowners, traditional rulers, and other stakeholders¹²⁴. The lack of inclusivity resulted in widespread disputes over land ownership and allocation, necessitating ongoing calls for reform.

3.3.3 Positive Impact of Inclusive Legislation on the Enacted Legislations:

In Nigeria for instance, there are several examples of legislation that involves inclusive consultation, leading to positive impact on various aspects of society. The National Health Act, 2014 is a result of extensive stakeholder engagement and consultation, ensuring that the healthcare needs of Nigerians are adequately addressed. National Minimum Wage Act¹²⁵ - The process of setting the minimum wage involved negotiations between the government, labor unions, and employers' associations. The inclusive process ensured broader acceptance of the law and reduced the likelihood of industrial disputes.¹²⁶

¹²³ Petroleum Industry Act, 2021.

¹²⁴ Land Use Act, 1978.

¹²⁵ National Minimum Wage Act, 2019

¹²⁶ Matthew Nkwocha, *An Appraisal of the Framework for Adjudication of Industrial Disputes in Nigeria* (Beijing Law Review, 2017).

3.4 Evaluation of Contemporary Legislative Drafting Practices:

3.4.1 Clear and Simple Language

The use of clear and simple language in legislative drafting is essential for ensuring that laws are accessible, understandable, and enforceable. By minimising ambiguity and complexity, legislators can make legal provisions more transparent and reduce the likelihood of misinterpretation, disputes and even the law being declared redundant.

Some features of clear and simple language in legislative drafting –

Clear and simple language in legislative drafting entails using plain language to avoid unnecessary legal jargons and archaic expressions, replacing them with straightforward and commonly understood terms. For instance, using ‘must’ instead of ‘shall’ to express obligation¹²⁷.

Conciseness - ensure laws are drafted using the fewest possible words without sacrificing clarity or precision, this reduces the risk of redundancy and confusion.

Consistency - use uniform terminology throughout the legislation to avoid conflicting interpretations. For instance, define key terms at the outset and using them consistently in the text.

¹²⁷ Freedom of Information Act, 2011.

Logical Structure - presents provisions in an organized and sequential manner, with clear headings, subheadings, and numbering to facilitates navigation and understanding.

Active Voice - Draft in the active voice to clearly indicate who is responsible for performing specific actions. For instance, ‘the employer must pay compensation’ is clearer than ‘compensation shall be paid by the employer.’

3.4.2 Drafting for the Digital Age

Drafting for the digital age refers to the adoption of modern tools, technologies, and methodologies in legislative drafting to create laws that are accessible, adaptable, and relevant in an increasingly digital world. The National Assembly of Nigeria can enhance the effectiveness of its laws by leveraging digital solutions and incorporating provisions that address the unique challenges and opportunities presented by the digital era¹²⁸. See the case of *Media Rights Agenda v. Federal Government of Nigeria*¹²⁹ which broadly discussed in contexts involving freedom of expression, regulation of digital media, and challenges arising from the application of outdated legislative frameworks to modern digital realities. The details suggest that the case addressed issues of freedom of the press and regulation under digital environments, reflecting the importance of laws designed to suit evolving technological contexts.

¹²⁸ *Media Rights Agenda & Ors v Federal Government of Nigeria* (2013) FHC/ABJ.

¹²⁹ *Ibid.*

3.4.3 Features of Drafting for the Digital Age

Integration of Digital Tools in Drafting Processes like Legislative Drafting Software that uses advanced tools for drafting, reviewing, and version control to improve accuracy and efficiency.¹³⁰

Data Analysis Tools – Leveraging data analytics to understand societal needs and predict the impacts of proposed legislation.¹³¹

Automated Cross-Referencing – the use software that automatically detects inconsistencies or gaps between laws.¹³²

Emphasis on Technology-Specific Provisions like Cybersecurity Laws – to address issues like data breaches, hacking, and unauthorized access to digital systems.¹³³

E-Commerce Regulations - Draft laws to govern online transactions, protect consumer rights, and ensure fair competition.¹³⁴

Digital Identity and Privacy Protections - Enact laws to secure personal data and regulate the use of biometric systems.¹³⁵

Accessible and Machine-Readable Legislation – helps publish laws in formats optimized for digital platforms, enabling easy access by citizens, lawyers, and public officials.

¹³⁰ Helen Xanthaki, *The Confluence of Innovation and Legislation: Advancing Legislative Drafting in the Digital Age* (Hart Publishing, 2023).

¹³¹ Milan Kunc, *Predictive Analytics in Law: A Systematic Review* (Springer Nature, 2018).

¹³² Felicia Dell’Orletta & Ors, *An Automated Framework for Detection and Resolution of Cross Referencing in Legal Texts* (Springer-Verlag, 2017) 2.

¹³³ CyberCrime (Prohibition, Prevention, Etc.) Act (2015) 2.

¹³⁴ Electronic Transaction Bill, (2017) 11, 21, 23 & 29.

¹³⁵ Nigeria Data Protection Act (2023) 4 & 25.

Machine-readable formats (e.g., XML or JSON) facilitates integration with legal research tools and applications.¹³⁶

Adaptability to Technological Change – this means Including provisions for regular updates or reviews to keep laws relevant as technology evolves. Also delegating detailed technical aspects to regulations, allowing for quicker adjustments without amending primary legislation.¹³⁷

Enhanced Stakeholder Participation Using Technology like Digital Consultation Platforms - Using online platforms to gather public and expert feedback on draft laws. Virtual Hearings facilitate stakeholder engagement through remote participation in legislative processes.¹³⁸

Digital Education and Training for Drafters - Train legislative drafters on emerging technologies, their societal impacts, and how to draft effective regulations for them. Incorporate digital literacy into the training curriculum for lawmakers and legislative aides.¹³⁹

3.4.4 Stakeholder Engagement and Consultation

Stakeholder engagement and consultation are critical to ensuring that legislation is well-informed, inclusive, and effective. When these processes are absent or inadequate during

¹³⁶ Helen Xanthaki, *Drafting Legislation: Art and Technology of Rules for Regulation* (Hart Publishing, 2014) 213.

¹³⁷ Ibid.

¹³⁸ Claudia Chwalisz, *Innovative Citizen Participation and New Democratic Institution: Catching the Deliberative Wave* (Organisation for Economic Co-operation and Development(OECD), 2020) 47.

¹³⁹ Helen Xanthaki, *Drafting Legislation: Art and Technology of Rules for Regulation* (Bloomsbury, 2014) 217.

the drafting stages of laws by the National Assembly, it leads to several negative consequences that affect the overall quality, acceptance, and enforceability of the legislation.

3.5 Best Practices for Ensuring Effective Acts by the National Assembly

Before the actual drafting of legislation, it is important for the drafter to have a clear structural plan. Each provision should be written on its own sheet to make it easier to reorder sections as needed during the drafting process. Ultimately, how a statute is organised largely depends on the drafter's stylistic preference.¹⁴⁰ Certain conventional practices are peculiar to legislation, the practice for instance, whereby the number of sections standalone, while subsections are placed on parenthesis is a permanent feature of legislation. This may appear a simple matter, but departure from the practice would result to absurdity and confusion in the legislation¹⁴¹. This notwithstanding, every jurisdiction adopts a particular style of drafting, and in practice, there is a clear difference between the methods used to draft laws in Common Law countries and those used in Civil Law countries. Towards circumventing the issues that may arise from a lack of accepted format, legislative drafting offices may adopt the use of practice or style manuals and a system should be put in place to regularly review the drafting process. Creating a manual for this purpose requires a thorough and thoughtful assessment of current practices and going through this process often leads to valuable improvements. (see for example, the “Bill Manual for House of Representatives”.¹⁴² In addition to drafting Manual, each drafting

¹⁴⁰ Commonwealth Secretariat, *Legislative Drafting Manual* (Commonwealth Secretariat, 2008).

¹⁴¹ Gart Thornton, *Legislative Drafting* (3rd edn., Butterworth, 1987) 134.

¹⁴² A publication of the National Institute for Legislative and Democratic Studies (May, 2019).

office should have a reliable method for recording useful examples and other valuable resources. Having a structured way to share knowledge and experiences within the office can greatly improve the quality of work and foster a more satisfied and effective team.¹⁴³ This highlights how important it is to comply with form. The imperative for consistency and standardisation in the language and structure of Bills are based on the fact that the power to make laws shall be exercised by Bills made and passed by the Senate and House of Representatives.¹⁴⁴ As a result, adopting and sticking to a set-procedure in drafting legislative instruments will have the following benefits –

- i. Eliminate as much as possible, inconsistency and deficiency in form, language and structure of Bills;
- ii. Ensure standardisation in drafting and structuring of Bills;
- iii. Facilitate the work of drafting Bills by serving as a toolkit; and
- iv. Ensure that Bills are drafted in the language and structure that make them clear, certain, concise, consistent, complete and comprehensible to the public.

Other practices to ensure that Acts of the National Assembly are effective, impactful, and aligned with the needs of society are –

- i. Adherence to Constitutional Principles - all Bills must comply with the Nigerian Constitution, particularly with provisions on fundamental rights, legislative competence, and procedural requirements. The court highlighted that division of

¹⁴³ Gart Thornton, *Legislative Drafting* (4th edn., Butterworth, 1996) 128.

¹⁴⁴ CFRN 1999 58(1).

powers between federal and state governments must be clearly delineated to avoid conflicts.¹⁴⁵

- ii. Clarity, Simplicity, and Precision in Drafting - Use clear, plain, and precise language to minimize the risk of misinterpretation. Ensure all technical terms, acronyms, and phrases are properly defined within the Act. Ambiguities in the Cybercrime Act, 2015 have led to litigation due to vague terms, highlighting the importance of clarity.¹⁴⁶
- iii. Evidence-Based Legislative Drafting – the use of research, statistics, and impact assessments to inform legislative decisions. Also analyze the potential economic, social, and environmental impacts to ensure laws are practical and enforceable.¹⁴⁷
- iv. Alignment with International Standards - Benchmark legislation against international treaties, conventions, and recognized norms to ensure relevance. For instance, by aligning laws like the Data Protection Bill with global frameworks such as the GDPR to enhance compliance and international compatibility.¹⁴⁸
- v. Public Awareness and Education – to publish laws in accessible formats (e.g., plain language summaries) and ensure they are easily available online and offline and to

¹⁴⁵ *Attorney General of Lagos State v Attorney General of the Federation & Ors* (2004) 18 NWLR (Pt. 904) 1.

¹⁴⁶ Olatunji Olusola, *The Cybercrime Act, 2015 and the Limits of Legislative Drafting in Nigeria* (vol. 12, Nigerian Bar Journal, 2019) 45.

¹⁴⁷ Helen Xanthaki, *Drafting Legislation: Art and Technology of Rules for Regulation* (Bloomsbury, 2014) cap 3.

¹⁴⁸ Olatunji Oyelade, *A Comprehensive Analysis of the Nigerian Data Protection Regulation and the European Union General Data Protection Regulation* (vol. 17 Nigerian Bar Journal, 2021) 145.

conduct awareness programs to educate the public and stakeholders about the provisions and objectives of new laws.¹⁴⁹

- vi. Enforcement and Compliance Provisions – it is good to specify how the law will be implemented, monitored, and enforced and ensure penalties and sanctions are proportionate and enforceable. Weak enforcement mechanisms in environmental laws have hindered their effectiveness in Nigeria.¹⁵⁰

3.6 Comparative Analysis of Nigeria to Ghana and United States of America (USA)

A comparative study of the legislative drafting stages between Nigeria, Ghana, and the United States reveals important similarities and differences that highlight best practices for improving the effectiveness of legislative processes. Each country's experience provides valuable insights into how legislative drafting can better align with societal needs, legal traditions, and governance goals.

In Nigeria, the stages of legislative drafting, from instructions to scrutiny, often encounter challenges such as unclear legislative goals, insufficient stakeholder engagement, and poor structural organisation. These challenges result in ambiguities and enforcement difficulties, as seen in cases like *Attorney General of Lagos State v. Attorney General of the Federation* (2004), which highlighted jurisdictional conflicts due to vague provisions. While recent advancements, such as the use of plain language in the *Freedom of Information Act* (2011),

¹⁴⁹ Marlia, Nurhadi & ors, *Plain Language intervention to Improve Public Understanding of Legal Language* (ResearchGate, 2024); https://www.researchgate.net/publication/378451771_PLAIN_LANGUAGE_INTERVENTION_TO_IMPROVE_PUBLIC_UNDERSTANDING_OF_LEGAL_LANGUAGE_DESCRIPTIVE_ANALYSIS_OF_CONTOVERSIAL_ARTICLES_IN_THE_JOB_CREATION_LAW, accessed on 31/05/2025.

¹⁵⁰ Brown Cleverline, *Effective Environmental Compliance and Enforcement in Nigeria: Motivation, Challenges and Prospects* (African Journal of Law & Criminology, 2021) 91.

have improved accessibility, the process still faces significant constraints, including limited time for scrutiny and a lack of advanced technological tools.

Ghana's legislative drafting process demonstrates notable strengths in stakeholder engagement. The Ghanaian Parliament has institutionalised public consultation during the drafting of key legislation, ensuring laws reflect diverse societal perspectives.¹⁵¹ The drafting of Ghana's *Petroleum Revenue Management Act* (2011) included extensive consultation with civil society groups, industry stakeholders, and local communities, which enhanced its relevance and acceptability. Ghana also places strong emphasis on training legislative drafters through specialised programs, a practice that Nigeria could adopt to address skill gaps in its drafting personnel.¹⁵²

In contrast, the United States provides a model for utilising advanced technologies and meticulous scrutiny in legislative drafting. The U.S. employs robust research support through institutions like the Congressional Research Service, which aids lawmakers and drafters in conducting comprehensive analyses during the drafting process. Additionally, the use of sophisticated drafting software ensures consistency and precision in legislative texts.¹⁵³ Thorough examination by numerous committees and independent monitoring organizations also helps the U.S. legislative process by minimising the possibility of

¹⁵¹ The Nation, Towards Strengthening Legislative Drafting (Vintage Press, 18 April 2017) 25.

¹⁵² Nyarko Sefa, *Petroleum Revenue Management in Ghana: A Case for Transparency and Accountability* (University of St Andrews, 2021); https://research-portal.st-andrews.ac.uk/files/275295718/Sefa_Nyarko_EIS_2021_Petroleum_Revenue_Mgt_and_RTI_AAM.pdf, accessed on 31/05/2025.

¹⁵³ Heitschusen Valerie, *Introduction to the Legislative Process in the U.S. Congress* (Congressional Research Service, 2025); <https://crsreports.congress.gov/product/pdf/R/R42843/13>, accessed on 31/05/2025.

ambiguities.¹⁵⁴ For instance, the Affordable Care Act (2010) underwent extensive drafting and redrafting stages, though some ambiguities, like the phrase "established by the State," still necessitated judicial resolution.¹⁵⁵ in *King v. Burwell* (2015).

Comparing these practices to Nigeria reveals areas for potential improvement. Nigeria could adopt Ghana's emphasis on public participation to enhance the inclusivity and relevance of its laws. Incorporating the U.S. model of advanced technological tools and comprehensive research support would also address drafting inefficiencies and improve legislative clarity. By aligning its drafting stages with these global best practices, Nigeria's National Assembly can enhance the quality, precision, and societal impact of its legislation. This alignment would ensure that laws are not only enforceable but also meet the evolving needs of the country.

¹⁵⁴ *Congressional Oversight Manual* (Congressional Research Service, 2021).

¹⁵⁵ *King v Burwell* (2015) (576 US) 473.

CHAPTER FOUR

DISSECTING LEGISLATIVE DRAFTING: STAGES, PROBLEMS, AND PATHWAYS

This chapter undertakes a detailed examination of the Stages of legislative drafting in Nigeria, drawing from doctrinal analysis, comparative insights, and reviewed legislative practices. It presents and analyses the findings derived from the research questions and objectives, offering a structured reflection on the key stages of legislative drafting, namely instruction, analysis, design, composition, and scrutiny. Through this exploration, the chapter identifies systemic inefficiencies, procedural gaps, and capacity limitations within the drafting process of the National Assembly. It further discusses the practical implications of these shortcomings and highlights successful reform models from other jurisdictions such as Ghana and the United States. The ultimate aim is to illuminate both the persistent challenges and potential reform pathways that can enhance the clarity, coherence, and enforceability of legislation enacted by the National Assembly.

4.1 Key Questions and What the Research Revealed:

- i. What are the established stages in effective legislative drafting?

From the review of scholarly sources and practical drafting guidelines, the established stages in legislative drafting generally include: (i) the receipt and clarification of instructions, (ii) legal and policy analysis, (iii) the development of a framework or design (iv) the composition of the legislative text, and (v) scrutiny. Scholars like Crabbe and

Dickerson emphasize the iterative and interpretive nature of these steps, requiring both legal expertise and policy alignment.¹⁵⁶

While these stages are widely recognized in legislative drafting literature, they are not formally codified or consistently practiced within the National Assembly. In principle, legislative drafting in Nigeria follows a similar theoretical structure, but in practice, drafters often move from instruction directly to composition without sufficiently articulating a legislative scheme or conducting deep legal analysis.¹⁵⁷ The absence of formal procedural guidelines has left room for ad hoc practices that undermine the doctrinal integrity of legislative drafting. The established stages are critical not only for coherence and enforceability but also for ensuring alignment with legislative intent and public policy goals. Until these stages are formally institutionalized in Nigeria, the quality of legislation will remain unpredictable.

- ii. To what extent does the National Assembly comply with the requirements of these stages?

Evidence from legislative interviews, secondary reports, and academic literature suggests partial and inconsistent compliance with the established drafting stages. The process is frequently influenced by political urgency, limited stakeholder consultation, and

¹⁵⁶ Reed Dickerson, *The Fundamentals of Legal Drafting* (Little, Brown & Co., 1986).

¹⁵⁷ Jaja Tonye, *Strategies for Improvement of the Quality of Legislative Drafting in Nigeria* (International Journal of Legislative Drafting & Law Reform, 2024) 50.

institutional inefficiency. Legislative instructions are often broad or ambiguous, limiting the drafter's ability to engage in thorough analysis or structured design.

The National Assembly lacks a formalized internal process to ensure compliance with drafting stages. This procedural laxity results in a spectrum of drafting outcomes, some laws are relatively coherent, while others are internally contradictory or ambiguous.¹⁵⁸

Compliance with drafting stages should not be optional but institutionalized as a legislative standard. The unpredictable application of these steps reflects a deeper institutional flaw, including the absence of a clear regulatory or supervisory body for legislative drafting. The adoption of a drafting manual and internal quality control units within both legislative chambers is advisable.

iii. To what extent does non-compliance or otherwise impact the legislative drafting process?

Non-compliance with the established drafting stages significantly compromises the quality of legislative output. Laws that lack structural integrity or legal clarity are more susceptible to judicial challenge, delayed implementation, or misinterpretation by enforcement agencies. Several statutory instruments have had to be amended shortly after enactment due to drafting errors or conceptual ambiguities.¹⁵⁹

The effects of non-compliance are not only legal but institutional. Poorly drafted laws undermine public confidence in the legislative process and create gaps in enforcement. The

¹⁵⁸ Tonye Jaja, *Strategies for Improvement of the Quality of Legislative Drafting in Nigeria* (International Journal of Legislative Drafting & Law Reform, 2024) 52 – 82.

¹⁵⁹ Ibid.

phenomenon also leads to increased litigation, where courts are compelled to interpret ambiguous provisions, sometimes distorting legislative intent.¹⁶⁰

The impact of non-compliance extends beyond academic critique, it has tangible implications for justice delivery, public trust, and democratic accountability. legal clarity must be treated as a constitutional imperative, not a discretionary virtue. Drafters must be held to a professional standard, with sanctions for consistent failure to meet drafting quality thresholds.

- iv. Are there best practices for improving compliance and effectiveness of legislative drafting in the National Assembly?

Countries like Ghana and the United States have successfully enhanced drafting quality by adopting drafting manuals, continuous professional training, public consultation mechanisms, and structured scrutiny processes. In contrast, National Assembly has no unified drafting framework and lacks formalized capacity-building systems.¹⁶¹ The Federal Justice Sector Reform Coordinating Committee, in collaboration with bodies such as NILDS and NIALS, validated a National Legislative Drafting Guide in 2021. Although designed to standardize bill drafting practices, it has not yet been formalized or adopted as an official manual, reinforcing the observation that existing guidance remains informal and lacks institutional backing.¹⁶² In March 2025, the Clerk to the National Assembly, Barrister Kamoru Ogunlana, addressed a delegation from the British Parliament and explicitly called

¹⁶⁰ *Solomon Okedara v Attorney General of the Federation* (2019) CA/L/CS/937.

¹⁶¹ The Nation, Towards Strengthening Legislative Drafting (Vintage Press, 18 April 2017) 25.

¹⁶² Justice-security.ng.

for the development of a legislative drafting manual. He highlighted that the absence of such a formal guide contributes to inconsistent legislative quality and undermines coherence in lawmaking.¹⁶³

Recent policy moves, such as the Oronsaye Report's recommendations (including the 2024 merger of the Nigerian Investment Promotion Commission with the Nigerian Export Promotion Council), suggest a growing recognition of structural inefficiencies, but these reforms have yet to be extended to the legislative drafting process.

Best practices in other jurisdictions highlight the benefits of institutional reform, including procedural transparency, reduced legislative errors, and improved enforceability. The lack of such mechanisms in Nigeria reflects a systemic neglect of legislative architecture as a professional discipline.¹⁶⁴

It is no longer adequate to treat legislative drafting as a clerical or ancillary function of governance. The National Assembly must adopt a legislative policy framework that includes drafting protocols, mandatory stakeholder engagement, and the use of technology. Reforms must be both structural and cultural.

¹⁶³https://www.canlii.org/en/commentary/doc/2022CanLIIDocs3268?utm_source=chatgpt.com

¹⁶⁴ The Nation, *Towards Strengthening Legislative Drafting* (Vintage Press, 18 April 2017) 25.

4.2 Importance of the New Findings from the Analysis:

The new findings generated from this research hold substantial importance in both academic and institutional contexts, particularly within the discourse on legislative drafting in developing democracies such as Nigeria.

- i. These findings make an original contribution by disaggregating the legislative drafting into five distinct yet interdependent stages, instruction, analysis, design, composition, and scrutiny, and by evaluating each stage within the operational framework of the Nigerian National Assembly. This nuanced analysis reveals specific procedural deficiencies that had hitherto been treated in overly generalized terms in existing literature. The clarity brought to each drafting stage offers a more precise tool for diagnosing systemic weaknesses and addressing them with targeted reforms.
- ii. The research introduces a comparative dimension, juxtaposing Nigeria's legislative drafting practices with international standards from jurisdictions such as Ghana and the United States. This comparison is not only instructive in identifying global best practices, but also provides a critical mirror through which Nigeria's unique structural and procedural shortcomings can be examined. The importance here lies in the ability of these comparisons to offer transferable strategies that are adaptable to the Nigerian context.
- iii. The findings are important because they go beyond mere identification of challenges; they offer a critical evaluative framework that links drafting

deficiencies to real-world consequences. Specifically, the research demonstrates how weaknesses in the legislative drafting process often result in laws that are vague, internally inconsistent, poorly implemented, or easily challenged in court. This connection elevates the discourse from abstract legal theory to tangible governance outcomes, underscoring the impact of legislative drafting on the rule of law, policy effectiveness, and public trust.

- iv. The findings are significant in that they propose empirically grounded and actionable reforms, including standardized drafting procedures, enhanced drafter training, incorporation of technology, and structured public consultations. These proposals provide a practical roadmap that can inform policy, training programs, and institutional restructuring efforts within the National Assembly and related government agencies.
- v. The new findings are valuable because they fill a research gap by focusing on the stages of legislative drafting rather than merely its product. While previous studies often centered on the clarity of legislative language or judicial interpretation, this research shifts the spotlight onto the institutional and procedural foundations of lawmaking. In doing so, it strengthens the understanding that legislative quality is a function of legislative drafting process, and that reform must begin with how laws are conceived, structured, and refined before enactment.

4.3 Ambiguous Legislative Goals

Ambiguous legislative goals refer to unclear, imprecise, or conflicting purposes outlined in legislation. These ambiguities make it difficult for stakeholders, courts, implementing

agencies, and the public, to understand the law's intent and apply it effectively. Such ambiguities have the potential to weaken the rule of law, increase litigation, and decrease the efficacy of laws in Nigeria and worldwide. In *Attorney General of Lagos State v. Attorney General of the Federation*,¹⁶⁵ the Section 1 of the Urban and Regional Planning Act was unclear about whether the authority for urban planning is resided with the federal or state government. This lack of clarity led to a jurisdictional dispute between Lagos State and the federal government, necessitating judicial intervention to resolve the ambiguity. In the same vein, the Petroleum Industry Act¹⁶⁶ faced criticism for its ambiguous provisions regarding host community funds and the definition of "host communities." This lack of clarity led to confusion about who qualified as beneficiaries under the law, which in turn delayed the implementation of critical provisions intended to benefit these communities. The case of *Centre for Oil Pollution Watch v. Nigeria National Petroleum Corporation*,¹⁶⁷ the case highlighted significant gaps in environmental regulations and underscored the importance of precise legislative drafting to address such deficiencies effectively. Looking beyond Nigeria, the Affordable Care Act¹⁶⁸ in the United States included a provision using the phrase "established by the State," which created uncertainty about whether federal subsidies for health insurance were limited to state-run exchanges or extended to federally facilitated ones. This ambiguity required resolution by the U.S. Supreme Court, which dealt with the matter in the case of *King v. Burwell*.¹⁶⁹ Similarly, the Human Rights Act¹⁷⁰ in the

¹⁶⁵ (2004) 18 NWLR (Pt. 904) 1.

¹⁶⁶ (2021).

¹⁶⁷ (2019) CA/L/CS/937/2017.

¹⁶⁸ Affordable Care Act, 2010. Sections 1311, 1321.

¹⁶⁹ *King et al v Burwell* (2015) 576.

¹⁷⁰ (1998).

United Kingdom has faced challenges due to vague definitions of terms such as "public authority," which have led to inconsistent judicial interpretations. This ambiguity has prompted litigation to determine whether specific organizations are covered under the Act's provisions.¹⁷¹

Effects of Ambiguous legislative goals -

- i. Legislative Redundancy and Overlaps - Ambiguity in legislative goals may cause overlaps with existing laws or create redundancy, leading to conflicts between statutes. This undermines the coherence of the legal framework and hampers effective governance¹.

Increased Litigation - ambiguity in legislative language often results in disputes that end up in courts, as Stakeholders challenge or seek clarification on the provisions This takes resources and time away from law enforcement. See *Attorney General of Lagos State v. Attorney General of the Federation*.¹⁷²

- ii. Poor Compliance Rates - when legislative goals are unclear, the public and businesses may fail to comply, either due to misunderstanding or deliberate avoidance. For instance, unclear tax laws may lead to low compliance and reduced revenue collection.

4.4 Unskilled Drafting Personnel

Unskilled drafting personnel can significantly undermine the effectiveness of laws enacted by the National Assembly. Poorly trained or inexperienced draftsmen often produce laws

¹⁷¹ Human Rights Act, 1998.

¹⁷² (2004) 18 NWLR (Pt. 904) 1.

that are unclear, ambiguous, inconsistent, or difficult to implement. These shortcomings affect the legislative process and its outcomes in several ways –

Impacts of unskilled Personnel on Legislations –

- i. Ambiguity in Legal Provisions - unskilled drafters may fail to use precise language, leading to laws that are open to multiple interpretations. This ambiguity results in disputes and litigation, often requiring judicial intervention for clarity.¹⁷³
- ii. Inconsistent Terminology - lack of expertise can lead to the use of inconsistent terms within a statute, creating confusion and making implementation difficult.
- iii. Conflict with Existing Laws - poorly drafted laws may fail to harmonize with existing legislation, causing overlaps or contradictions that hinder enforcement.¹⁷⁴
- iv. Implementation Challenges - agencies responsible for implementing legislation may struggle with unclear or impractical provisions, delaying or derailing policy objectives.

4.5 Inadequate Collaboration

Inadequate collaboration refers to the insufficient engagement and cooperation among key stakeholders, including lawmakers, legislative draftsmen, government agencies, civil society, and subject-matter experts, during the legislative drafting process. This shortcoming has the potential to compromise the caliber and effectiveness of the National Assembly's Acts.

¹⁷³ N.K. Chakrabarti, *Principles of Legislation & Legislative Drafting* (3rd edn., Cambray & Co. Pvt Ltd., 2017) 458.

¹⁷⁴ Helen Xanthaki, *Thornton's Legislative Drafting* (5th edn., Bloomsbury, 2013) 133.

Impact on the Effectiveness of Legislation –

- i. Lack of Stakeholder Input - without broad consultation, critical perspectives may be overlooked, leading to laws that fail to address the complexities of the issues they seek to regulate. For instance, laws affecting specialized sectors like health or technology may lack provisions tailored to these areas due to the absence of expert advice.
- ii. Inadequate Consideration of Local Contexts - collaboration with stakeholders ensures laws are suited to Nigeria's diverse socio-economic and cultural realities. A lack of collaboration can result in policies that are misaligned with practical realities, reducing their applicability and public acceptance.
- iii. Poor Harmonization - Inadequate collaboration between federal and state legislators may lead to conflicts or overlaps between federal laws and state statutes, creating jurisdictional disputes. A notable example is the conflict over urban planning laws highlighted in *Attorney General of Lagos State v. Attorney General of the Federation*.¹⁷⁵
- iv. Resistance and Non-Compliance - When stakeholders are excluded from the drafting process, they are less likely to support or comply with the resulting legislation. This resistance can hinder enforcement and reduce the law's impact.
- v. Increased Litigation - Ambiguities and conflicts arising from poor collaboration often result in legal challenges, which delay the implementation of laws and

¹⁷⁵ (2004) 18 NWLR (Pt. 904) 1.

increase the judiciary's workload. See *Faith Okafor v. Lagos State Government*,¹⁷⁶ demonstrates the challenges arising from unclear or poorly consulted legislation.

¹⁷⁶ (2016).

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

This chapter presents a summary of the key findings, offers the writer's concluding thoughts, and outlines specific recommendations derived from the findings related to each of the research objectives.

5.1 Summary of Findings

The study confirmed that there are universally recognized stages of legislative drafting, including research and consultation, policy formulation, instruction writing, analysis, composition and scrutiny which are widely regarded in comparative jurisdictions as foundational to drafting coherent and enforceable legislation. These stages are essential not only for legal clarity but also for the overall effectiveness of legislative instruments in addressing public policy goals.

The National Assembly exhibits inconsistent compliance with these established stages. While certain procedural norms are informally observed, the absence of a formalized, codified drafting framework has led to wide variations in practice. Notably, there is often a lack of in-depth policy analysis and consultation during the initial stages, and the technical composition of bills is sometimes undertaken without sufficient legislative schematization or legal precision. This inconsistency hampers standardization and undermines legislative coherence.

The study found that such non-compliance has tangible consequences. Legislative instruments that do not undergo the full drafting cycle are more likely to suffer from structural ambiguities, internal contradictions, and vague enforcement mechanisms. These deficiencies have contributed to a number of judicial interpretations, legislative amendments, and implementation failures, thereby undermining the legitimacy and efficacy of the laws in question.

In drawing lessons from comparative models, the study revealed that countries such as Ghana and the United States have improved drafting quality and institutional efficiency through the implementation of structured drafting manuals, periodic training for drafters, public engagement protocols, and centralized drafting offices. These best practices offer actionable insights for reforming Nigeria's legislative drafting regime.

The research also found that despite the growing awareness of the deficiencies in Nigeria's legislative drafting practice, reform efforts remain fragmented and largely unenforced. The recent development of a National Legislative Drafting Guide is a commendable step, yet its lack of formal adoption and institutional integration reflects broader systemic inertia. There remains a critical need for binding procedural reforms, institutional capacity-building, and the elevation of legislative drafting as a specialized and professionalized function within Nigeria's democratic governance structure.

5.2 Recommendations

In view of the critical importance of a structured drafting process, it is recommended that the National Assembly formally adopt a standardized legislative drafting framework that

outlines each essential stage, ranging from policy formulation to post-enactment review. This framework should be incorporated into legislative practice through a binding manual approved by the National Assembly and widely disseminated among legislative drafters, committee clerks, and relevant administrative units. Such codification will ensure clarity in expectations and uniformity in practice.

To enhance compliance with the established drafting stages, it is recommended that a Legislative Drafting Oversight Unit be created within the National Assembly. This unit should be mandated to review all legislative proposals for adherence to the required stages prior to submission for plenary consideration. Additionally, internal performance audits and compliance tracking mechanisms should be institutionalized to monitor drafting practices and enforce procedural discipline.

Given the observed consequences of non-compliance, it is recommended that continuous professional development programs be introduced to train legislative drafters, committee staff, and legislations on the implications of substandard drafting. These programs should include workshops on policy analysis, legislative schematization, and legal language. Further, there should be a legislative requirement for pre-enactment scrutiny by legal drafting experts to identify and address errors or ambiguities before bills are passed into law.

To incorporate best practices, the National Assembly should consider adopting a hybrid model that draws on the strengths of both the Ghanaian and United States legislative systems. This includes establishing a centralized Drafting Office responsible for all bill

formulations, mandating public consultation for bills of significant impact, and embedding feedback system into the drafting process. Moreover, digital drafting tools and technology-enabled review platforms should be introduced to promote precision, facilitate collaborative editing, and enhance institutional memory.

5.3 Conclusion

This research has critically examined the various stages involved in the legislative drafting process of the National Assembly of Nigeria, emphasizing how each phase contributes to and/or undermines the effectiveness of the laws ultimately enacted. It became evident that while the theoretical framework of legislative drafting in Nigeria aligns with international best practices, its practical execution remains inconsistent and fraught with institutional and procedural deficiencies.

The findings revealed that the instruction phase often suffers from ambiguity and insufficient policy clarity, thereby weakening the foundational intent of proposed legislation. The analysis and design stages are hampered by inadequate research, poor stakeholder engagement, and limited access to data. Composition frequently lacks the necessary clarity and precision, resulting in laws that are difficult to interpret or apply. Furthermore, the scrutiny stage is typically underutilized, with many laws passing through legislative channels without thorough review or input from experts and the public.

Comparative insights from countries like Ghana and the United States illustrated that with strong institutional support, stakeholder consultation, and the integration of technology in drafting processes, legislation can be made more coherent, enforceable, and responsive to

societal needs. These examples underscore the importance of systemic reform in Nigeria's drafting practices.

Ultimately, this research concludes that the effectiveness of Nigeria's legislative output is intrinsically tied to the quality of its drafting process. To enhance the clarity, enforceability, and accessibility of legislation, it is imperative to institutionalize standard drafting procedures, invest in training for drafters, embrace digital tools, and establish mechanisms for continuous review and public participation. Strengthening each stage of the legislative drafting cycle will not only improve the quality of laws but also reinforce public trust in the legislative process and promote sustainable governance.

5.4 Contribution to Knowledge

This research offers significant scholarly and practical contributions to the field of legislative drafting and legal reform in Nigeria –

It contributes to knowledge by offering a localized procedural evaluation framework that can serve as a model for legislative improvement in other developing democracies.

It demonstrates how failure to adhere to specific drafting stages directly correlates with legislative inefficiencies, judicial reversals, and poor implementation. This evidence-based connection provides a causal legal insight that has not been systematically documented in Nigerian legal drafting studies.

It introduces a framework for evaluating legislative drafting reforms, rooted in the operational practices of comparable democratic systems. This comparative tool is novel in African legislative studies.

The stage-by-stage reform arrangement (e.g., formalizing instruction, mandating analytical memoranda, etc.) offers a policy framework not previously available in drafting literature.

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