

**AN APPRAISAL OF LEGISLATIVE DRAFTING INSTRUCTIONS AND THE
DRAFTING OF THE 1979 CONSTITUTION OF NIGERIA**

BY

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BEING

**A DISSERTATION SUBMITTED TO THE NATIONAL INSTITUTE FOR
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MARCH, 2025.

DECLARATION

I, **Gideon Esebame EJEMAI** with Matric No: **PG/NLS0802159**, hereby declare that this Dissertation was solely written by me and it is a record of my work. I declare further that this Dissertation has not been presented by anybody previously, either in part or whole to this University or any other institution of higher learning for the award of degrees of any kind or programmes and that all sources of data or information have been duly acknowledged by proper references.

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APPROVAL

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DEDICATION

I dedicate this dissertation to God almighty, the giver of life, wisdom, good health and sound mind.

To the loving memory of my beloved mother, Mrs. Juliana Adiblakumor Edebe, whose prayers, support and sacrifices aided me in no small measure in my academic pursuit. As you continue to rest among the stars, know that you are deeply missed and forever in my heart.

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CDC (Constitution Drafting Committee)

ABSTRACT

The quality and effectiveness of every legislation is largely dependent on the issuance of proper legislative drafting instruction by the instructor, proper understanding and analysis of this instruction by the drafter before proceeding to designing and composing the proposed legislation. However, more often than not, drafters in the process of translating these policies into legislative form, deviate from the legislative instruction issued to them by the instructor or policymaker. This is made possible because the Bill Drafting Manual operational in Nigeria, is not binding on drafters. This research examined the importance of legislative drafting instruction in the legislative drafting process and the drafting of the 1979 Constitution. The aim of this research was to wholistically appraise and evaluate the significance of drafting instructions in the legislative drafting process; an assessment of how non-compliance with drafting instructions could negatively impact on the quality of laws that are passed in Nigeria and the need to make the Bill Drafting Manual have binding force on instructors and drafters. The significance of the study lies in its potential to improve legislative drafting practices by enhancing the quality of legislation that are enacted.

The research adopted the doctrinal methodology as against the non-doctrinal methodology. This approach is usually regarded as desk or library research. It is concerned with ascertaining the consequences; usually legal; of a fact situation. It seeks information that is already in the public domain. The Doctrinal approach was the primary research option of this research as it directly enquired into the state of law shorn of arguments. This approach used documented work in organizing materials, and also sought information from primary and secondary sources such as statutes, decided cases, relevant textbooks and journals.

In line with the objectives of wholistically appraising the significance of legislative drafting instructions in the legislative drafting process; how non-compliance with legislative

drafting instructions could negatively impact on the quality and effectiveness of laws enacted; the need for strict compliance with legislative drafting instructions to be made mandatory in the Bill Drafting Manual and for the Bill Drafting Manual to have binding force on all instructors and drafters in Nigeria, the key findings underscored the imperative to amend the Bill Drafting Manual in order for it to have binding force on all instructors and drafters as this will ensure mandatory compliance with the checklist for issuing legislative drafting instructions as well as the checklist of drafting a proposed legislation.

To enhance the quality and effectiveness of legislations that are enacted, the study recommends that the Bill Drafting Manual operational in Nigeria should be amended by the introduction of a clause that makes it mandatory for all policymakers and drafters to strictly adhere to all the checklist contained therein. Also, the amendment of the Bill Drafting Manual to make it have binding force. There should be effective collaboration between policymakers, instructors and drafters in the drafting process in Nigeria. There should be the establishment of an independent body saddled with the responsibility of assessing the impact of enacted.

Keywords: Constitution, Drafting, Instruction, Legislation, Manual.

CHAPTER ONE

INTRODUCTION

1.1 Background and introduction to the Study

Legislative drafting like any other form of legal drafting is an institutionalized means of communication. The essential distinction is that unlike other forms of legal drafting which may be easily altered or changed, legislative drafting is more of a permanent enactment which stands on its own and speaks for itself without any form of assistance, elucidation or explanation from the drafter or draftsman. It is worthy of note that a great deal of care and diligence is to be exercised in drafting enactments in order to reduce as much as possible, the likely difficulties and confusion that may befall the future administration and interpretation of such enactments. Thus, the legislative drafting process may be said to begin with the receipt of drafting instructions and ends with completion of the draft¹. For there to be a good and effective legislative draft which will eventually metamorphose into an enactment, there must be a proper, clear and unambiguous drafting instructions which the draftsman shall in turn subject to critical thinking and analysis. This is so because drafting instructions enhances the quality, acceptability and effectiveness of legislation as shall be demonstrated anon. Whilst it is conceded that there is no single way of drafting legislation, as every jurisdiction has its own style, policies and guidelines; it is worthy of note that it is generally acceptable and expected that the final product should address the policy objectives of the instructor as contained in the drafting instruction. Hence, a proper understanding of the drafting instruction by the

¹Onyekachi Duru, *Legislative Drafting* < <https://www.linkedin.com/pulse/legislative-drafting-onyekachi-duru-esq/>> accessed on 24th May, 2024 at 2:00pm

draftsman, helps to effectively convey the intentions of the instructor and thereby making the legislation achieve its intended purpose.

Drafting instructions are data provided to the legislative drafter by the policy makers, instructors or sponsors as a means of assisting the drafter to draft effective legislation within the parameters detailed by the policy makers of the government or the instructor as the case may be. These instructions can be brief or detailed but must provide the drafter with necessary background information for the comprehension of all aspect of the instruction. Drafting instructions should be in narrative form, clear and plain language. Furthermore, drafting instructions are a process of communication, because the proposed policy must be communicated effectively to the drafter so that it can be placed into legislative form². There is no single form which drafting instructions shall take, but the most important thing is that it conveys to the drafter in very clear terms; what has to be done? Why it has to be done? And when it has to be done? Also, drafting instructions are mostly given in writing but in urgent cases, oral instructions may be considered, but the most preferable one is to convey a written instruction to the drafter. When drafting instructions are issued to the drafter it must be strictly complied with, derogations should not be made unless there is a special reason for same.

The significance of receiving proper drafting instructions from the instructor, policy maker, sponsor, or legislator as the case may be, to enable the drafter come up with quality draft and effective legislation³ cannot be overemphasized. Legislations commence by way of transmitting instructions by the instructor or sponsor who might be a legislator or the instructing ministries, department, boards, or parastatals or it may

² P. P Biribonwoha, 'The Role of Legislative Drafting in the Law Reform Process (2006) Common Wealth Law Bulletin vol. 32, issue 4

³ Vcrac Crabbe, 'Legislative Drafting', p.16

be an individual or an organization, to the drafter, who may come up with a draft Bill for presentation to the National Assembly where it will be passed into law. Hence, detailed instructions play a pivotal role in drafting effective legislation, because it helps the draftsman to draft a Bill that conforms with the intentions of the instructor or sponsor, it describe and limit what the draft Bill is to contain⁴.

Drafting instructions should state in precise form what the problem is? What led to the problem? What attempt had been made to solve the problem without legislation? And how and why such an attempt failed? And other details that may assist the drafter to appreciate the overall objective of that legislative project⁵. A properly written drafting instruction may do the following:

- a. Assist the drafter in understanding the objectives of the proposal;
- b. Speed up the production of a first draft;
- c. It saves drafting time, by reducing the number of drafts;
- d. Reduce the number of issues needing to be resolved during the drafting process;
- e. Limit the number of meetings to clarify ambiguities; and
- f. Reduce possible tension between the instructor and draftsman caused by misunderstanding of what is required.

In emphasizing the importance of quality drafting instructions as a necessary concomitant for the drafting of quality legislation, it is imperative to understand what exactly is quality legislation. Quality legislation refers to legislation that is appropriate, adequate and precise in solving the problem it is intended to solve.

⁴ The Significance of Drafting Instructions in Drafting Legislation in Nigeria, By Ibrahim Madaki Jibril [BEING A DISSERTATION SUBMITTED TO THE NATIONAL INSTITUTE FOR LEGISLATIVE AND DEMOCRATIC STUDIES/UNIVERSITY OF BENIN (NILDS) POST GRADUATE PROGRAMMES, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAW (LLM) LEGISLATIVE DRAFTING]

⁵ *ibid*

Quality legislation also means well developed and illustrated ideas as well as well edited document. This must be achieved through language and structure that is readily understandable to those who are affected by it, and those who administer it⁶.

From the foregoing, it comes out clearly that the relationship between the drafter and the instructing officer is vital in the law-making process. Where the instructing officer issue poor drafting instructions, it will inevitably lead to drafting poor legislation which will lead to legal uncertainties and ambiguities which will eventually attract litigations. Be it noted that resort to litigations is one of the indicators of a poorly drafted legislation. The lack of proper drafting instructions in Nigeria has tremendously impacted the drafting process negatively. It is therefore important that both the instructing officers and the drafters take cognizance of the fact that the quality of their work determine the overall outcome of the legislation.

1.2 Statement of the research problem

In Nigeria, there is no framework that provides for the compulsory and mandatory adherence to drafting instructions by drafters and as such, the instructor play less role in drafting the legislation thus leaving the drafter with wide discretionary powers to chart the course of the entire drafting process which in most cases, gives the drafter leverage to depart from and/or refuse to comply with the instruction as issued. Suffice to say that there is a Bill Drafting Manual operational in Nigeria, which serves as the formal statutory requirement or guidelines stating how drafting instructions are to be prepared or presented as well as the basic benchmark of complying with the said instruction which entails understanding, analyzing, designing, composing and scrutinizing. However, this manual is not made mandatory.

⁶ Ibid at page 3

Thus, the non-mandatory nature of this Drafting Manual greatly affects the drafting process as well as prevent the drafting of qualitative and effective legislation. Furthermore, suffice to say that the 1999 Constitution of the Federal Republic of Nigeria (as altered), which is the ground norm does not provide any procedure for issuing drafting instructions and the production of quality and effective legislation⁷. Whereas, in other climes like Australia, Canada, Namibia, France, Rwanda, etc. The manuals that guide the issuance of drafting instructions as well as a format for issuing drafting instructions are made mandatory and compulsory on instructors and drafters. It goes without saying that these guidelines, templates and formats assist the instructors and the draftsmen in these countries, in preparing proper drafting instructions and ease the work of the drafter in drafting effective legislation but also constitute a binding force on the instructor and drafters thereby making compliance compulsory. This research seeks to appraise legislative drafting instructions and the drafting of the 1979 Constitution and how the failure and/or refusal of the 1979 Constitution Drafting Committee (CDC), to comply/adhere with the drafting instructions issued to it impacted the quality and effectiveness of the 1979 Constitution that was eventually enacted.

1.3 Research Questions

This research intends to provide answers to the following research questions formulated to guide the conduct of this study:

- i. What is the importance of drafting instructions in the legislative drafting process?

⁷ T. C Jaja "Strategies for Improvement of Quality of Bills and Legislative Drafting in Nigeria" [2019] I.J.L.D. L. R Vol. 8 issue 1

- ii. How non-compliance with drafting instructions can negatively impact on the quality of bills that are eventually passed into law?
- iii. How effectively do drafters adhere to the checklist as contained in the Bill Drafting Manual when drafting legislations?

1.4 Aim and objectives of the study

The aim of this research is to appraise legislative drafting instructions with a view to ascertain the propriety or otherwise of legislative drafting instructions, the understanding of same and the ultimate impact of legislative drafting instructions on the laws passed in Nigeria with a focus on the 1979 Constitution of the Federal Republic of Nigeria. The objectives of this study, therefore, are:

- i. Wholistically appraise and evaluate the significance of drafting instructions in the legislative drafting process.
- ii. An assessment of how non-compliance with drafting instructions could negatively impact on the quality of laws that are passed in Nigeria.
- iii. The necessity for strict compliance with legislative drafting instructions to be made mandatory in the Bill Drafting Manual.

1.5 Scope of the study

The scope of this study is limited to Nigeria. The research work focusses on an appraisal of legislative drafting instructions and the 1979 Constitution of the Federal Republic of Nigeria. The research is confined to drafting instructions in the legislative drafting process in Nigeria and the 1979 Constitution of the Federal Republic of Nigeria as well as how drafting instructions issued in Nigeria has impacted the quality of laws enacted in Nigeria. However, it is worthy of note that in appropriate case, illustrations and lessons will be drawn from other jurisdictions.

1.6 Significance of the study

The significance of this study cannot be overemphasized. It cannot be gainsaid that the effectiveness and quality of every legislation is determined by several factors which among others include subjecting the draft legislation to the five stages in the drafting process as proposed by Thornton. Chief amongst these stages understanding the proposal and/or draft instruction. Suffice to say that in order to understand the draft instruction, the said instruction as to be properly couched and issued by the instructor to the draftsman as the quality of bill to be drafted by the draftsman is fundamentally dependent on the nature of the instructions issued by the instructor or the initiator of the proposal. This research will be significant in the following areas which are hereunder listed thus:

- i. It will help in emphasizing the importance of the issuance of drafting instructions in the legislative drafting process in Nigeria.
- ii. It will help to highlight the fallouts in the 1979 Constitution which was occasioned by the lack of understanding and non-compliance with the drafting instructions issued to the 1979 Constitution drafting committee.
- iii. It will help to emphasize the need for drafters to strictly comply and adhere to legislative drafting instructions issued and not to depart from the drafting instructions issued.
- iv. It will help in highlighting the importance of synergy between the policymaker, instructor and drafter during the drafting process for quality and effective legislation.
- v. It will help in proffering solutions to the non-issuance of legislative drafting instructions and the issuance of improper legislative drafting instructions by recommending that before any bill is passed into law, it would be thoroughly

scrutinized to ensure that it meets the checklist as provided in the Bill Drafting Manual.

- vi. It will help to highlight the need for a review of the Bill Drafting Manual in order to make it compulsory and binding on all drafters in Nigeria.

1.7 Research methodology

The researcher employed the doctrinal methodology for the study. This work adopts the following method in sourcing materials and coming to the findings of this research: The research work employs both the primary and secondary methods of collating data. Information for this research work will be drawn from the 1979 Constitution of the Federal Republic of Nigeria and textbooks, journal, online articles, reports and internet publications etc. constitute the secondary sources analyzed.

This research adopts the descriptive and comparative techniques in order to ensure that the researcher examines already existing literature on legislative drafting instructions and the 1979 Constitution of the Federal Republic of Nigeria. The researcher conducted qualitative and comparative analysis of the data collated from secondary sources and arranged them based on the objectives of the study in order to find answers to the research questions.

1.8 Literature review

According to G.C. Thornton his book titled Legislative Drafting⁸, the process of drafting legislation primarily, may be said to begin with the receipt of drafting instructions and end with the completion of an agreed draft. Hence, the pivotal stage that drafting instructions take in the legislative process cannot be overstated. The role of instructing officers in the legislative drafting process is very vital as they are the

⁸Thorntons's Legislative Drafting, fifth ed; p.175

ones to issue drafting instructions to legislative drafters. Be it noted that drafting instructions serves as the foundational basis upon which a legislative drafter is to come up with a draft Bill. It is of immense benefit to the drafter, and perhaps, more importantly, in the smooth progression and prompt completion of a high-quality draft. However, despite the emphasis on the importance of drafting instructions in the drafting process, G.C. Thornton in his book under review, did not suggest or recommend the compulsory, mandatory and strict compliance with drafting instructions by drafters in the course of legislative drafting. This is considered a gap in G.C. Thornton work. It is worthy of note that despite the all-important nature of drafting instructions in the legislative drafting process, more often than not, drafters do not comply with the drafting instructions as issued by the instructor or policy maker because there is nothing that provides for strict compliance that has a binding force on the drafters. Thus, the need to ensure strict adherence to drafting instructions by drafters has become imperative by making it compulsory and binding on all drafters. Accordingly, the appraisal of drafting instructions in the legislative process and the 1979 Nigeria Constitution to be espoused in this research work, finds expression in Thornton's work titled Legislative Drafting and furthermore, this research seeks to bridge the gap identified therein by proposing that the checklist as it relates to the issuance of legislative drafting instructions contained in Nigeria's Bill Drafting Manual⁹ be made mandatory/compulsory thereby by making the Bill Drafting Manual in Nigeria to have binding force on drafters.

⁹Bill Drafting Manual for House of Representative, First Ed. A Publication of National Institute for Legislative and Democratic Studies National Assembly Abuja.

Accordingly, to a work titled Guide to Preparing Drafting Instructions¹⁰, published by the Office of Legislative Counsel, Ministry of Justice, Province of British Columbia, drafting instructions are a process of communication. The proposed policy must be effectively communicated to the drafter so that it can be placed into legislative form. Furthermore, the purpose of drafting instructions is to guide the legislative drafter who drafts the Bill and it also serves as a benchmark in determining whether the draft Bill captures the intendments of the drafting and/or issuing officer as contained in the instruction. Essentially, drafting instructions are to be in written form. However, the gap identified in this literature which this research work seeks to bridge is the fact that the issuance of legislative drafting instructions is not made mandatory or compulsory in this guide. Hence, it merely serves the purpose of a guide and therefore gives the drafter the leeway to depart from it.

It is pertinent to note that the Bill Drafting Manual House of Representatives National Assembly¹¹, provides a checklist that entails the basic benchmarks for drafting instructions. Additionally, this manual provides a checklist for the drafter as it relates to basic benchmark on analyzing the legislative instruction or policy. However, it does not provide for strict compliance with same in order to make it have binding effect on the drafter. This in itself, is a gap this research has identified and therefore recommends that the checklist containing basic benchmark as it relates to complying with the drafting instructions by analyzing and understanding same should be made mandatory and any departure from the instruction would attract sanctions to the drafter.

¹⁰ Guide to Preparing Drafting Instructions by Office of Legislative Counsel, Ministry of Justice, Province of British Columbia< https://www.crownpub.bc.ca/Content/documents/3-DraftingInstructions_August2013.pdf> accessed on 29th May, 2024 at 11:45 pm

¹¹ Bill Drafting Manual for House of Representative, First Ed. A Publication of National Institute for Legislative and Democratic Studies National Assembly Abuja.

According to the speech delivered by General Murtala Mohammed¹² to the members of Constitution Drafting Committee of 1979, the drafting instructions were communicated in the said speech to the Committee. What the late General had in mind before setting up the committee and what he hoped to see in the draft constitution was clearly communicated in his speech to the committee. General Murtala Mohammed in the said speech also proceeded to mention certain specific things he wanted the committee to take note of and reflect in the draft constitution. The speech of General Murtala inaugurating the 1979 Constitution Drafting Committee constitutes oral legislative drafting instruction as against written legislative drafting instruction which is acclaimed to be the most preferred type of legislative drafting instruction. The fact that the said drafting instruction was not in writing but verbally communicated to the committee via a speech, is a gap which this study has identified and recommends that legislative drafting instruction should always be issued in written form. This research work shall critically examine the speech delivered by General Murtala Mohammed to the Constitution Drafting Committee of 1979 in order to ascertain whether or not the said speech constitutes a proper legislative drafting instruction issued by an instructing officer to the drafter and juxtaposing same with what a legislative drafting instruction should look like as espoused by the great Garth Thornton¹³.

According to Prof. Ben Nwabueze¹⁴, quite frankly, there are many flaws and many errors in the content of the 1999 constitution. So many errors and I as a person, was

¹² The Speech of General Murtala Mohammed inaugurating the 1979 50member Constitution Drafting Committee <<https://www.youtube.com/watch?v=CeEsFIUk1no>> accessed on 29th May, 2024 at 11:01 pm

¹³ Thornton's Legislative Drafting, fifth ed; p.177

¹⁴ Vanguard Newspaper Interview of Professor Ben Nwabueze on Nigeria's Constitutional Challenges <<https://www.vanguardngr.com/2013/03/the-mistakes-rotimi-williams-and-i-made-about-nigerias-constitution-nwabueze/>> accessed on 29th May, 2024 at 11:17 pm

partly responsible because I was a member of the constitution drafting committee set up by the military government in 1978. I was not only a member but chairman of one of the sub-committees that produced Chapter 2, the fundamental objectives and one of the cardinal flaws in the constitution is the concentration of powers in the centre. That is why I accept that I am partly responsible for that because at the time, late Chief Rotimi Williams, a close friend of mine and nearly everybody in the Constitution Drafting Committee were so overwhelmed with this feeling, this patriotic feeling that we needed unity and the most effective way to achieve unity of the country is by having a very strong central government. Most of us in the committee shared that idea at the time. Chief Williams shared it because of the patriotism in us and we wanted a united Nigeria, we feel we can achieve unity by having a strong central government. Then, what did we do to achieve our mis-guided objective? We took away 50 per cent of the items on the concurrent list and gave it to the centre. We felt by doing this, we are establishing unity. We did not stop at that. We looked at the residual matters, these are matters exclusive to the states, we took a large part of it, more than 30 percent and close to 50 percent; we took it away from states and gave to the centre. And the result is the almighty Federal Government, but what we discover was that instead of producing unity, we produced disunity because of the intensity of the struggle to control the centre. The intensity is so much and it is not just in the political power that was concentrated at the centre, much of the money also went to the centre and so by action, we destroyed what is called fiscal federalism. Too much money at the centre increased the struggle for the control of the centre and the control of the money itself and that has remained the feature of the Constitution up till today. Suffice to say that this obvious admission by Prof. Ben Nwabueze, unequivocally underscores the gap identified as it relates to the non-compulsory/mandatory nature of drafting instructions

despite being captured in the checklist of the extant Bill Drafting Manual operational in Nigeria. A critical analysis of Prof. Ben Nwabueze's interview granted to vanguard newspaper, reveals the gap of non-compliance with the legislative drafting instructions in the drafting process by drafters. Hence, this study seeks to resolve this gap by recommending compulsory compliance with legislative drafting instructions.

From the foregoing, it comes out indubitably clear that majority of the members of the Constitution Drafting Committee of the 1979 Constitution did not have proper understanding of the draft instructions issued to the committee vide the speech of General Murtala Mohammed. This obvious assertion, supports the position of this research paper which seeks to appraise the significance of drafting instructions in the legislative drafting process as well as the need for a proper understanding of the said instructions which is the first stage out of the five stages of the drafting process as propounded by Garth Thornton. Additionally, another poser that readily comes to mind and for which this research is going to address is whether the speech of General Murtala Mohammed as delivered to the Constitution Drafting Committee of 1979, can validly pass for a well-articulated drafting instruction to the said committee in view of the fact that the said speech was never reduced in writing. This issue shall be frontally addressed in the course of this research paper in view of the fact that many scholars have opined that one of the attributes of a quality and/or good drafting instruction is that it should be communicated to the draftsman in writing. Hence, drafting instructions are to be in written format. This will assist the draftsman in having a proper understanding of the instructions as the draftsman would have the opportunity to go over the instruction from time to time in the course of drafting the proposal or proposed bill.

From the totality of all the works reviewed, it comes out clearly that it is impracticable to have a work that comprehensively discussed an appraisal of legislative instructions and the 1979 Constitution of Nigeria. This research will broadly discuss the topic an appraisal of legislative drafting instructions and the 1979 Constitution of Nigeria and the significance of drafting instructions in the legislative process as well as how improper drafting instructions and the lack of understanding of drafting instruction can negatively impact on a draft Bill. The non-provision for a legislative drafting guide or manual in Nigeria which can prescribe what form a draft instruction should take, contains the gap in knowledge which the research work covers up.

CHAPTER TWO

CONCEPTUAL FRAMEWORK AND HISTORICAL BACKGROUND

Legislative drafting instruction is very important in the legislative drafting process, particularly in the context of constitution making. This chapter clarifies certain concepts that exist in the legislative drafting process and provides the contextual background that informed the inauguration of the 1979 Constitution Drafting Committee of Nigeria. It begins by first defining certain concepts in the legislative drafting process that are crucial for the drafting of quality and effective legislation. The discussion then transitions to the historical evolution of constitutional development in Nigeria, emphasizing the socio-political facts that necessitated a new constitutional post-civil war. By examining both the conceptual tools and the historical circumstances surrounding the 1979 Constitution, this chapter sets the stage for a deeper understanding of the drafting framework of the 1979 Constitution and its implications for governance in Nigeria till date.

2.1 Conceptual Framework

Legislative drafting deals with the composition of a proposed legislation; it is an art of writing legislation. It can also be said to be the process of constructing a text of legislation. However, before the commencement of the process of composing of a proposed legislation or constructing a text of legislation, there must first be a policy upon which the objectives of the proposed legislation is predicated. It is the responsibility of policymakers who more often than not, are authorities, ministries and agencies within the government to identify clearly what the problem is, the objectives of the proposed legislation which will be to solve the problem and the necessary tools

available to achieve the goal. Once the policy idea is clearly articulated, it is then translated into legislative drafting instructions.

2.1.2 Legislative Drafting Instructions: These are data provided to the legislative drafter by the policymakers or instructors which communicates the objectives of the proposed legislation and how these objectives are to be achieved¹⁵. The instruction is to aid the drafter in comprehending the intentions of the policymakers or instructors and it seeks to assist the drafter in coming up with a quality and effective draft. Legislative instructions provide the drafter with all relevant background information that is necessary and incidental for a proper understanding of all areas of the instruction¹⁶. Thus, it is said that the process of drafting legislation begins with the issuance of drafting instructions by the policymaker or instructor to the drafter.

Consequently, it cannot be gainsaid that the issuance of legislative drafting instructions is very crucial in the legislative drafting process and it signifies the commencement of the legislative drafting process. Additionally, it is worthy of note that the issuance of proper legislative drafting instructions and a good understanding and analysis of same, will enhance the quality, effectiveness and acceptability of the proposed legislation.

Some of the key elements that form part of the framework of legislative drafting instructions are:

- i. **Policy Objectives:** The legislative drafting instructions must in very clear terms outline the policy goals of sought to be achieved by the proposed legislation. This will ensure that the drafter understands the context and direction of the

¹⁵ Vcrac Crabbe, Legislative Drafting, Volume 1, 1998, Cavendish Publishing Limited p.19

¹⁶ *ibid*

proposed law. The legislative drafting instructions must also of a necessity, point out specific challenges that the proposed legislation seeks to address.

- ii. **Constitutional Compliance:** Legislative drafting instructions should confirm that the proposed legislation complies with all extent constitutional provisions.
- iii. **Clarity and Precision:** Legislative drafting instructions should communicate to the drafter the need for the use of plain language in the draft.
- iv. **Post Enactment Evaluation and Assessment:** Legislative drafting instructions should convey a mechanism on how the proposed legislation can be evaluated and assessed after it has been enacted in order to ascertain its effectiveness or otherwise.

2.2 Historical Background

Nigeria as a nation and/or geographical entity, is a creation of the Constitution. Nigeria became a full-fledged independent and sovereign state within the Commonwealth of Nations, in 1960, after a period of colonialism under the British government pursuant to the Nigerian Independence Act 1960; which was enacted by the British Parliament. Nigeria's constitutional development history can be divided into two eras which are the colonial or pre-independence era and the post-independence era. Whilst the colonial or pre-independence era covers 6 constitutional instruments to wit; (1914, 1922, 1946, 1951, 1954 and 1960), the post-independence era covers 3 constitutional instruments to wit; (1963, 1979 and 1999). Whilst each successive pre-independence constitutional instrument was enacted through an order-in-council of the British monarch, their post-independence counterparts were enacted in two ways: an Act of Parliament (1963 Constitution) and military decree (1979 and 1999).

The quest for “one Nigeria” began in 1914 with the Frederick Lugard Constitution¹⁷. The 1914 Constitution saw the amalgamation of the Colony and Protectorate of Southern Nigeria with the Protectorate of Northern Nigeria under the colonial authority of the British Monarch. The emergent entity was administered under the authority of the British monarch through her appointed agent: a Governor-General, Lord Fredrick Lugard who was the first Governor-General of amalgamated Nigeria. The 1914 Constitution created a Legislative Council of the Colony which was however restricted to making laws for the Colony of Lagos alone, whilst the Governor-General made laws for the rest of the country. The 1914 Constitution was replaced after eight years by the 1922 Sir Clifford Constitution.

2.2.1 Clifford Constitution of 1922

Sir, Hugh Clifford assumed office in 1919 as the Governor-General and he received pressure from the then West African Congress, to provide constitutions in West African subject states. Thus, the Clifford Constitution of 1922 was birthed and it introduced the first electoral system in Nigeria. The first election was conducted into the legislative council with four slots. 3 for Lagos while 1 for Calabar.

It also introduced a legislative council which replaced the Nigerian council. It consisted of 46 members with the Governor as the head. Out of the 46, 23 were official members and 19 were unofficial members. The remaining four were elected. It is pertinent to note that the legislative council could only legislate for the South whilst the Governor legislated for the North through proclamation. There was also an Executive Council, however, it had no Nigerian as members. After Sir, Hugh Clifford, there were two other governors, Cameroon and Bernard Boudillion. They did not do much in terms of

¹⁷ Anifowose, Remi (1999), “Constitution and Constitutionalism” in Anifowose, Remi and Enemuo, Francis (Eds.), Elements of Politics. Lagos, Malthouse Press Limited.

constitutional development. However, Boudillion divided Nigeria into East, West and North for administrative purposes. This was laid the foundation for regionalism in Nigeria¹⁸.

2.2.2 Richards Constitution of 1946

Sir, Arthur Richards who was the then governor general of Nigeria, made a proposal for constitutional amendment before 1944. This was as a result of the pressure mounted on him by the educated elites. They felt that the Clifford Constitution did not represent the indigenous population. Consequently, the governor introduced the Richards Constitution of 1944 with the aims of promoting Nigeria's unity; to provide greater participation of Africans in the determination of their own affairs. The constitution provided for a new legislative council, it had: The governor, 16 official members, and 28 unofficial members. Out of the 28, 2 were nominated by the governor while 4 were elected. The North had 11 members; the West had 8 members while the East had 6 members. The elected 4 were from Lagos and Calabar. Furthermore, the Richards Constitution made the legislative council legislate for the whole country.

The constitution also provided for Regional Houses of Assembly. The members of the regional assembly were nominated by the native authority. However, they were not legislative bodies in the true sense of it to the extent that they were not involved in law making. They however served as grounds for discussing national issues. Also, it was from the house of assembly that members were nominated to the legislative council. The East and West had unicameral legislature while the North, in addition to a house of assembly, had a house of chiefs.

¹⁸Olawaju Olamide, History of Nigerian Constitutional Development <https://djetlawyer.com/history-nigerian-constitutional-development/> accessed on 11/09/2024

Also, the constitution reduced the amount of the limited franchise from 100 pounds to 50 pounds. This was commendable because more people could vote and be voted for. However, it was still too expensive for most Nigerians at the material time.

Despite all these improvements compared to the Clifford constitution, the constitution still had some defects. First, it limited franchise to only Lagos and Calabar. Also, the money required for the right to vote was still too expensive for most Nigerians. Also, the regional houses of assemblies could not make laws, they were merely a forum for public discussion. The constitution also did not include the elites as those nominated into the regional houses of assembly and the legislative council were nominated by the native authority¹⁹.

2.2.3 Macpherson Constitution of 1951

Owing to the above criticism of the Richards constitution, there was agitations for a new constitution. The governor, Sir John Macpherson, not wanting to make the same mistakes as his predecessor, decided to include Nigerians in the constitutional making process. There was wide consultation of Nigerians even to the village levels. Also, there was the Ibadan conference of 1950. The result of all these was what led to the creation of the Macpherson constitution. The constitution provided for a federal legislature called the House of Representatives. It had 136 elected representatives, 6 ex-officio members and 6 nominated by the governor. 68 members were from the North, 34 from the West and 34 from the East.

The constitution also provided for regional legislatures that could make laws for their regions. The legislatures in the West and North were bi-cameral, each having a house of chiefs alongside the regional legislature. In the East, it was a unicameral legislature.

¹⁹ ibid

It was also from the regional legislatures that members were nominated to the legislative council.

2.2.4 Lyttleton Constitution of 1954

Despite the improvements made by the Macpherson constitution, it could not still keep Nigerians united. Hence, it collapsed soon due to problems from the legislature. In 1953, Chief Anthony Enahoro of the Action Group proposed on the floor of the house that Nigeria should be given independence in 1956. The Northerners, who felt they were not ready for independence, opposed this. They proposed that independence should be given as soon as practicable. This led to a riot in Kano and the North threatened to secede. In order to calm things down, the then colonial secretary, Oliver Lyttleton called the leaders for a conference in London. Some issues were discussed during the conference and committees were set up. Their reports were to be considered in the Lagos Conference of 1954. It was the conference that led to the Lyttleton Constitution.

The constitutional conferences of 1953 and 1954 held in London and Lagos respectively, gave birth to the Lyttleton Constitution. The constitution fully introduced a federal system, with North, East, West and Southern Cameroons while the Federal Capital Territory was in Lagos. The Eastern and Western regions became self-governing in 1957 while the North became self-governing in 1959. Southern Cameroon through a referendum opted out of Nigeria²⁰.

²⁰ *ibid*

2.2.5 1960 Independence Constitution

On 1st October 1960, Nigeria became independent and what this meant is that Nigeria was a sovereign state independent of colonial influences. However, this was not exactly the case as the Queen of England was still the head of state, although she was represented by a Nigerian in the person of Dr. Nnamdi Azikiwe who was the Governor-General while Tafawa Balewa was the Prime Minister.

The constitution was like the 1954 constitution but with some changes as there was the inclusion of provisions for acquiring citizenship of the country. There was also included in the Constitution provisions for the procedure for amendment of the constitution. Judicially, Judges of the courts were appointed through nomination by the judicial service commission upon the assent of the Privy Council. The Privy Council was also the highest court of appeal in the country.

The constitution divided legislative powers between the central and the regional legislature. It made provisions for an exclusive legislative list. It also made provisions for a concurrent list. Items in the exclusive list were to be legislated upon by the central legislature and the regional legislatures. Items not included in any of the lists were regarded as residual list which were within the sole purview of the regional legislature. The constitution also provided for a dual executive in that we had the Head of State and the Head of Government in two different people. The head of government was Nnamdi Azikiwe while the head of state was Tafawa Balewa. The head of state had only ceremonial functions while the head of government had executive powers. He was responsible for the day to day running of the activities of government.

The constitution also provided for its supremacy. This was in contrast to the convention in a parliamentary system. In a parliamentary system what we have is parliamentary

supremacy, and not constitutional supremacy. However, due to the heterogeneous nature of Nigeria, the Constitution had to be supreme in order to dissuade fears of domination of minority groups.

Although Nigeria was purported to have gained independence from the British, there were still some vestiges of imperialism in the independence constitution. One of such vestiges is that the Queen at the time, was still the head of state, who was represented by a Nigerian. Additionally, the highest court of appeal was the Judicial Committee of the Privy Council in the House of Lords as against the Nigerian Supreme Court. It was as a result of these issues and more, that a new constitution had to be made and this gave rise to the 1963 Republican Constitution²¹.

2.2.6 1963 Republican Constitution

The 1963 Republican constitution was passed into law by the Federal House of Representatives on September 19, 1963 and came into force on October 1, 1963. This was after the constitutional conference held in Lagos on July 25 and 26 1963 where issues bordering on the real independence of Nigeria were resolved.

One of the main features was that the Queen of England ceased to be Head of State. The head of state was the president who was to be chosen by secret ballot of a joint session of both houses of the National Assembly. The President who was Dr. Nnamdi Azikiwe was the command-in-chief of the armed forces.

The Supreme Court rather than the Privy Council, became the highest court of appeal in the country. Also, the Judicial Service Commission was abolished as the appointment of Judges and their promotions was vested in the prime minister. The power of judicial

²¹ ibid

review was vested in the Supreme Court as it had the power to declare actions which were contrary to constitutional provisions void.

The seats in the Senate and House of Representatives were increased. The senate was increased from 44 to 56 while the house of representatives was increased from 305 to 312. The reason for this increase was the creation of the mid-western state. Thus, new seats had to be created to accommodate this development.

Despite all of these changes in the constitution, there are still some criticisms leveled against it. First was that the President was elected by the National Assembly instead of the electorates. The National Assembly consisted of just a few people in comparison with the whole electorates. This might end up making the president loyal to the legislature instead of the people. Also, the abolition of the Judicial Service Commission could be said to be a bad move in view of the fact that leaving the regulation of the judiciary which ought to be independent in the hands of the executive would in no small measure compromise the judiciary. Judges would not want to offend the prime minister in order to for them to get promoted, thereby circumventing justice.

Following the political crisis in the country at the time, the republican constitution did not last. On January 15, 1966, there was a coup d'état which removed politicians from office and this brought about the military rule until 1979²².

2.2.7 1979 Presidential Constitution

In 1975, General Murtala Muhammed took over the reins of power in Nigeria following a military coup. Upon assuming power, he made a promise to Nigerians to bring back civilian rule and he immediately began to set the necessary machineries in place for the

²² ibid

actualization of his promise. As part of the initial steps towards the transition to civil rule in 1975, the regime of General Murtala Muhammed constituted a Constitution Drafting Committee (CDC) of 49 eminent Nigerians and they were saddled with the responsibility of producing a draft constitution for the second republic which was scheduled to begin on October 1, 1979. As a matter of fact, General Murtala initially nominated 50 members into the Constitution Drafting Committee (CDC) which was chaired by legal luminary Chief Rotimi Williams. However, Chief Obafemi Awolowo who later emerged a presidential candidate in the course of the transition programme, declined to serve on the committee²³. General Murtala Muhammed in his inauguration speech of the 49-member Constitutional Drafting Committee on 18th October, 1975 instructed the committee in very clear terms to come up with a people's constitution that will provide a sound basis for the continued existence of a united Nigeria²⁴ and it was given its terms of reference thus:

- i. The creation of political institutions which ensure maximum participation and consensus and orderly succession to political power.
- ii. The elimination of cut-throat political competition based on a system of winner takes all
- iii. The development of consensus politics and government, based on a community of all interests rather than the interests of sections of the country
- iv. The elimination of over-centralization of power in a few hands and the decentralization of power as a means of diffusing tension
- v. A careful definition of the powers and duties of the leading functionaries of government

²³Femi Falana, Making a People's Constitution <https://www.thisdaylive.com/index.php/2019/04/29/making-a-peoples-constitution/#google_vignette> accessed on 11/09/2024

²⁴ Ibid

- vi. The creation of a system of government in which the president and vice president are elected with clearly defined powers, and are accountable to the people; and
- vii. The evolution of a free and fair electoral system which ensures adequate representation of the cross section of the nation at the center²⁵.

Unfortunately, General Murtala Mohammed could not see all of these through as he was assassinated on February 13, 1976. However, his successor, Olusegun Obasanjo carried on with the actualization of his promise of ushering in democracy. Hence, the 49-member Constitution Drafting Committee (CDC), came up with a draft constitution which was passed on to the constituent assembly headed by Justice Udo Udoma for final adjustments to be made to the constitution. Consequently, the constitution was promulgated and it came into force on October 1, 1979.

Suffice to say that the 1979 constitution jettisoned the parliamentary system of government and replaced it with a presidential system. The president was both head of state and head of government, commander in chief of the armed forces. The president was chosen by the electorates in a general election. He did not appoint his ministers from the parliament unlike the previous constitution. There was also an executive governor for each state who was the chief executive of the state.

The legislature was bicameral which consisted of the Senate and House of Representative. The Senate had 95 members while the House of Representatives had 450 members. The states, on the other hand, had a unicameral legislature. The legislature had the power to impeach the president whilst the state House of Assembly had the powers to impeach the Governor.

²⁵ Chidi A. Odinkalu. *The Management of Transition to Civil Rule by the Military in Nigeria (1966 - 1996)*

The Judicial service commission was reintroduced and it had the powers to make recommendations of Judges for appointment subject to assent by the President and the screening by the legislature. The judiciary was also given the power to interpret the constitution and declare acts that are contrary null and void.

CHAPTER THREE

LEGISLATIVE DRAFTING INSTRUCTIONS AND THE DRAFTING OF THE 1979 CONSTITUTION OF NIGERIA

This chapter discusses the nature of legislative drafting instructions, the various types of legislative drafting instructions, what constitute proper drafting instructions and the drafting of the 1979 Constitution of Nigeria. By examining the nature of legislative drafting instructions, the types of legislative drafting instructions and what constitute proper drafting instructions, this chapter aims to elucidate the significance of the issuance of proper legislative drafting instructions and the understanding of same, in the drafting of effective and quality legislation.

3.1 The Nature of Legislative Drafting Instructions

Translating policy into legislations requires adequate preparation and sufficient time, because the legislation to be drafted must be in harmony and consistent with the policy that seeks to birth the proposed legislation. Consequently, the translator of the policy into legislation requires adequate time and resources to do that. Ideally, the instructing officer or instructor should have fully developed a policy which will serve as the basis upon which the drafting instructions will be predicated.

Legislative Drafting Instructions are data provided to the legislative drafter by the policy makers, instructors or sponsors of a proposed legislation as a means of assisting the drafter to draft and/or come up with an effective legislation that accurately captures the intentions of the instructor²⁶. Suffice to say that legislative drafting instructions can be brief or detailed but must provide the drafter with the necessary background

²⁶ Vcrac Crabbe: Legislative Drafting, Volume 1, 1998, Cavendish Publishing limited p19.

information for the comprehension of all aspect of the intentions of the instructor in order to proceed with process of transforming that instruction into a proposed legislation²⁷. Legislative drafting instructions are a process of communication, because the intentions of the instructor must be effectively communicated to the draftsman in order for it to be put into legislative form.

There is no single form which legislative drafting instructions should take; however, it is important that a legislative drafting instruction communicates to the drafter in very clear terms, what should be done; why it has to be done and when it has to be done²⁸. Legislative drafting instructions are mostly given in writing but in some urgent cases, oral instructions may be considered, but the most preferable is to convey a written one. When drafting instructions are issued to the drafter it must be strictly complied with and derogations should not be made unless there is special reason for same. This is so because any such derogations made, would imply deviating from the intentions of the instructor. Be it noted that legislative drafting instructions should be in narrative form, clear, plain and free from jargon and technical language²⁹. Legislative drafting instructions written in plain language and in narrative form conveys the instructors' intentions more easily and enables the drafter understand the instructions without much stress. Hence, legislative drafting instructions should be comprehensive and complete.

²⁷ P. P Biribonwoha, 'The Role of Legislative Drafting in the Law Reform Process (2006) Common Wealth Law Bulletin vol. 32, issue 4 available online at

<<https://www.tandfonline.com/doi/abs/10.1080/03050710601178970>> accessed on 12/09/2024

²⁸Government of Queensland Handbook on Legislation (2020) available online at

<<https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/drafting-process/instructing-officer.aspx#3.4.3>> accessed on 13/09/2024

²⁹Finland Bill Drafting Instructions, Ministry of Justice Publication 2006:3 <https://regulatoryreform.com/wp-content/uploads/2015/02/Finland-bill_drafting_instructions-2006.pdf>

Technical and specialized terms should be avoided when issuing legislative drafting instructions and when necessary, they should be explained³⁰.

Depending on the nature of the Legislation, some legislative drafting instruction might be simple and in standard form and the drafting in turn will be so simple and quite speedily, others might be very difficult and take months or years to draft. Whatever the nature, the draft can only be effectively carried out on the basis of a written instructions from the instructor with a clear policy responsibility for the subject. The time required to draft and the quality always depend on the quality of the drafting instructions. The legislative drafting instruction tells the drafter what is to be achieved, how and when. When the aims and intentions of the instructor are well stated in the instruction, the drafter's task is easier, but when the aims and intentions are unclear or incomplete, the inadequacies are reflected in the drafting. A properly written legislative drafting instruction may do the following³¹

- a. Assist the drafter in understanding the objectives of the proposal;
- b. Speed up production of a first draft;
- c. It saves drafting time, by reducing the number of drafts;
- d. Reduce the number of issues needing to be resolved during the drafting process;
- e. Limit the number of meetings needed to clarify ambiguities; and
- f. Reduce possible tension between instructor and the drafter that may be occasioned by misunderstanding to what is required.

³⁰Queensland Government, Department of the Premier and Cabinet; Role of instructing officer in providing effective drafting instructions <<https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/drafting-process/instructing-officer.aspx#3.4.3>> accessed on 13/09/2024

³¹ A Manual for instructing Officers in Caricom Member p40 opt cit.

The instructor or policy maker must bear in mind that the drafting instruction or policy prepared and issued to the drafter, which will ultimately become a legislation, will either positively or negatively impact people's rights, freedom and the society in general. Hence, it is important that a thorough job is carried out as it relates to formulating the drafting instruction in order to prevent avoidable mistakes in the proposed legislation which can only be cured by another legislation that must undergo the entire preliminary process³².

3.1.2 What is Proper Drafting Instructions?

The objective of enacting any legislation is to give legal effect to the policies of government which will address social, economic or political needs of the society. For the government to achieve this, it requires effective and qualitative legislation that is appropriate in achieving the policy outcome upon which the policy was formulated and implemented³³. The foundation upon which the quality of any legislation is anchored may vary as it is said that it may depend on the soundness of the drafting instruction given or issued by the instructor to the draftsman. This research appraises and examines the significance of legislative drafting instruction and the drafting of the 1979 Constitution of Nigeria. Suffice to say that where a drafting instruction is properly issued and same is dutifully complied with by the draftsman, this will inevitably translate into a very sound and effective legislation eventually. Consequently, good legislative drafting instructions are significant in the drafting process. I dare say that it is the hallmark of the legislative drafting process.

³² Cooks Island: A guide to preparing instructions for Drafting of Legislation (2012). 2

³³ V.E. Aitken opt cit.

In Nigeria, it is worthy of note that there is no formal statutory requirement or guidelines stating how legislative drafting instructions must be prepared. Thus, it cannot be gainsaid that the absence of a formal statutory requirement on the issuance of legislative drafting instructions has affected legislative drafting process in Nigeria as well as hindered the drafting of sound and effective legislation. The 1999 Constitution of the Federal Republic of Nigeria (as altered), which is the ground norm of the land, does not make provision for any procedure for issuing drafting instructions neither is there any primary or secondary legislation or any manual that makes the issuance of legislative drafting instructions mandatory as well as stipulating the rules governing legislative drafting instructions for the production of quality and effective legislations. Whereas, in other climes like United Kingdom, Australia, Rwanda, France etc., there are manuals that guide the issuance of legislative drafting instructions as well as the format for issuing such legislative drafting instructions. These guidelines, templates and formats greatly assist the instructors and the draftsmen in these countries in preparing proper legislative drafting instructions and ease the work of the drafter in drafting effective legislation.

3.1.3 The Relationship between the Drafter and the Instructor

It is important to note that both the drafter and the instructor are key players in the drafting process as the instructor provides the requisite information which comes in the form of drafting instructions to the drafter. The drafter in turn, converts the instructions into legislative language but in some cases, guide the instructing officer in identifying and exposing weakness in the policy or its implementation or the proposed legislative scheme generally³⁴. It cannot be gainsaid that a successful drafting process would

³⁴ A Manual for instructing Officers in Caricom Member State p.19

require close collaboration between the instructors and the drafters. Legislative drafting instructors are more often than not, officers of government that issue instructions to the drafters for purposes of converting the instructions into legislative language. While drafters are persons who are saddled with the responsibility of helping instructors translate legislative drafting instructions into legislative language by conducting research, drafting of Bills, provision of legal advice and opinions as it touches on the issues at hand. A drafter can also be referred to any person that is vested with the responsibility of drafting Bills for sponsor. It is pertinent to note that a good understanding of the responsibilities of both the drafter and the instructor will contribute greatly to the quality of legislation that is eventually turned churned out.

More often than not, the quality of the drafting and the time spent in the drafting process depends on the quality of the drafting instructions that is issued to the drafter. Suffice to say that the period of converting legislative drafting instructions into legislative language, is a very crucial period for both the drafter and the instructor as they must of a necessity always be in constant communication all through this period. This affords the drafter the opportunity to seek clarity as it pertains to certain aspect of the instruction that may not be clear as well as bring to the attention of the instructor any legislative gap that is identified as having the tendency of influencing the policy formulation. Hence, in order to achieve an effective legislation, there is need for a strong synergy between the drafter and the instructing officer. Where a comprehensive drafting instruction is issued at the earliest time of drafting, there is the likelihood that the said policy proposal will come out smoothly and effective. Therefore, the instructing officer should provide adequate and clear drafting instructions, understand the role of the drafter and be able to work with the drafter. The instructing officer must be satisfied

that the instructions meet the policy objectives and should comment on issues of precision, consistency and clarity.

Effective and sound legislation is the product of collaboration between a skilled drafter and knowledgeable instructing officers. Most of the times instructing officers find it very difficult to criticize the draft proposed bill on the belief that the draft copy being the product of the drafter is better left with him alone and not for the concern of the instructor as they will hardly detect any errors. It is therefore, important that the instructing officers should not just be able to prepare instructions and answer questions only but should have the requisite skills to view the draft and raise observations and recommend corrections where necessary³⁵.

3.1.4 Factors that Facilitate the Drafting of Quality Instructions

To draft a qualitative instruction for drafting legislation in Nigeria the following factors must be taken into considerations:

- i. Proper Policy Instructions:** Generally, before any instruction to draft legislation is issued by an instructor a developed policy must have been prepared and issued. This is so because the policy formulation stage definitely affects the process. If the policy is developed clearly, it naturally follows that the instructions to draft will also be clear and straight forward and where the policy is poorly formulated or developed, the drafting instructions would in the same vein be poorly issued and thereby affecting the quality of the legislation. To begin the drafting process, the drafter should appreciate the idea behind the proposed legislation or otherwise, the drafter will produce a bad piece of legislation.

³⁵ Ibid p20

In Nigeria most of the legislation are drafted and passed by the legislatures without a clear policy being developed; and where the policy is poorly developed, there is the tendency that it will be poorly carried out. In most cases relevant agencies or department are not fully consulted and where consulted their inputs are hardly put into consideration in the policy development. In some instance the policy development and issuance of instruction is dominated by a single person in the ministry, this affects the quality of legislations.

Ann and Robert Seidman³⁶ re-emphasized the importance of quality legislative drafting instructions as follows:

Unless the legislative drafting instructions and the theory and methodology that underpins them guides the drafters in making an adequate empirical study of their countries relevant social realities their bills impact in changing problematic behaviours will depend on plain luck.

- ii. Sufficient Training of Instructing Officials and Drafters:** For legislation to be drafted effectively, instructing officials must be sufficiently trained in the area of providing drafting instructions as well as presenting them to the drafter. All legislative proposals should have a considered plan and resource person who is designated permanently to the assignment. Without committed resource personnel, the assignment will be adversely affected. Instructing officials should have powers to make pronouncements on matters or be able to get decisions speedily. The instructing officer communicating with the legislative drafter needs exceptional qualities, not only to organize drafting instructions and answering questions, but to examine and analyse drafts with a critical eye to ensure that they have captured what is required. Equally

³⁶ Ann Seidman and Robert Seidman and Nalim Abeyesekere, "Legislative Drafting for Democratic Social Change, A manual for drafters" (Kluwer Law International, London 2001) page 22

important is the fact that drafters must possess sufficient knowledge to enable the drafting of proper legislation upon receipt of the drafting instructions from the instructing officials.

Quality legislation usually results from good alliance involving a skilled drafter and knowledgeable instructing officials. The instructing official must have good judgment or innate aptitude for reading drafts and assessing what is correct and incorrect with them. The appointment of an instructing officer with sufficient seniority, skilfulness, authority, knowledge and reasonable understanding about the subject matter contributes to the quality of the bill. If this authority is trained, qualified and understands the constitutional and legal framework within which he operates he will give better instructions. He can respond to technical question and inquiries convincingly to clarify issues originating from the policy. On the other hand, if, this officer is not experienced in the operational aspects of the policy he will not be able to give good instructions. This will seriously affect the quality of the bill. Thus, the instructing officer appointed is very instrumental in determining the quality of the Bill drafted.

Although skilled in their field, some instructing officials are unwilling to make vital observations on drafts in the misguided belief that the legal text should be left to the legislative drafter and not of principal concern to them. Other instructing officials have an actual trouble considering the effects of drafts, since they may notice the terms and expressions but are unable to decipher the deficiencies or implications of the words used. Vital observations on the legislative drafter's draft, is a critical component in creating the best legislation achievable³⁷

³⁷The Influence of Drafting Instructions on the quality of legislation in Granada <<https://sasspace.sas.ac.uk/5907/1/Christine-Marcia%20Bowen%20LLM%20Dissertation.pdf>> assessed on 01/10/2024 at 3:58 pm

iii. Use of Drafting Manuals and Guideline: According to Thornton³⁸ every drafting office needs a practice or style manual and mechanism to keep it under review. This is worth the labour regardless of the size of the office. The production of such manual requires a careful and critical review of existing practices. According to Jaja³⁹ one of the quickest methods to improve the quality of Bills and legislative drafting in Nigeria is the publication of format of drafting instructions. The use of manuals and format for instructions in some jurisdictions like Australia, Canada, Namibia, and Netherlands have contributed in drafting quality instructions. The manual is intended to be a starting point and provides an overview for drafting instructions. It is also intended to encourage uniformity in the form, style and language of legislative measures. It is generally accepted and demonstrated that uniformity greatly contributes to the achievement of sound and effective legislation.

To enable the drafting of quality legislative drafting instructions, a manual or guidelines must be prepared to assist the instructors. The manual or guidelines will assist in communication and reliability of structure and substance of drafting instructions, guiding the instructing officer, how to write clear and readable instructions. To achieve this, a manual or guideline for instructors is imperative.

iv. Sufficient Time for Drafting: A critical factor in drafting a quality piece of legislation is time. The lack of time given for the understanding of the instructions, since most times drafts are expected to be prepared in short time periods to be submitted before Parliament creates problems. A prominent example of this pitfall was recognized in the drafting of the Infectious Diseases Control Bill 2020 which sought to control and prevent the spread of infectious diseases in Nigeria as a response to the covid 19

³⁸ Thornton opt. cit. p128

³⁹ T.C. Jaja opt. cit. p81

pandemic. This Bill which was sponsored by the then speaker of the Federal House of Representative, Rt. Honourable Femi Gbajabiamila was drafted within a very short period of time as it was expected to be presented before the Parliament for speedy passage in order to control and curtail the spread of as it was aimed at reacting or responding to the corona virus pandemic which was ravaging the world at the time. The fact that the Infectious Diseases Control Bill 2020, was hurriedly drafted, was visibly evident from most of the clauses contained in the bill and this generated a lot public uproar which eventually led to the withdrawal of the bill. The end result of most legislations drafted hurriedly is amendment or otherwise it leads to unnecessary litigations. In order to avoid unnecessary litigation and amendment of legislations, the instructing officer and the drafter should be given adequate time within which to finish their assignment. Hence, if adequate instructions to draft legislation is issued to the drafter, it will enable the drafter to come up with the draft bill timeously.

3.2 Draft Document by the Williams' Drafting Committee

The draft document of the Williams' drafting committee which eventually became the 1979 Constitution was the direct outcome of the majority draft constitution produced in September, 1976 by 47 of the 49 members of the Constitutional Drafting Committee (CDC) appointed by the military government of Murtala Mohammed in October 1975. This majority draft was rejected by two members of the Constitutional Drafting Committee, Yusufu Bala Usman and Olusegun Osoba, who decided to produce their

own minority report for the records and the benefit of posterity⁴⁰. This minority report shall be discussed in details anon.

The draft document of the Williams' lead drafting committee amongst several other things proposed the replacement of Nigeria's cabinet-style of government with the United States of America style of presidential system of government. This replacement of the style of government was all in a bid to enhance the federal government's ability to deal with national problems and thereby hold the country together. The draft document proposed separation of powers between the three branches of government, an independent judiciary, and complete freedom for the people to choose all their representatives on the basis of universal suffrage with secret ballots. The draft document also sought to reduce ethnic tensions by affirming the differences among Nigeria's ethnic groups under a robust federal structure and through such concepts as federal character and the Fundamental Objectives and Directive Principles of State Policy. Hence, the draft document make provision for social economic rights but in same breath, made it unavailable by declaring that these rights are non-justiciable. The draft document made proposition for immunity clause for the President and Vice President as well as the Governors and Deputy Governors. The draft document recommended state citizenship as against national citizenship. The draft document made proposition for the establishment of local governments as the third order of government⁴¹. Suffice to say that the draft document of the Williams' drafting

⁴⁰ Olusegun Osoba, The 1979 Constitution and its Legacy of Catastrophic Success of Governments <https://www.thisdaylive.com/index.php/2019/04/26/the-1979-constitution-and-its-legacy-of-catastrophic-success-of-governments/#google_vignette> accessed on 9/10/2024 at 5:41 pm

⁴¹ Ignatius Akaayar Ayua and Dakas C.J. Dakas Federal Republic of Nigeria https://www.forumfed.org/libdocs/Global_Dialogue/Book_1/BK1-C08-ng-AyuaDakas-en.pdf accessed on 10/10/2024 at 2:16 pm

committee was then sent to the Constituent Assembly, an elected body, for amendment and ratification.

It is worthy of note that whilst the majority draft document was published by the Federal Government of Nigeria and was widely debated by the public in 1976-1977 before it was put before the Constituent Assembly for further consideration and subsequent enactment in 1979, the minority report was declared non-existent by then military Head of State, Olusegun Obasanjo, who subsequently enacted the majority report as the 1979 Constitution after inserting into it the Land Use Decree of 1978 despite the objections raised by the Constituent Assembly as to its inappropriateness in a constitution.

The authors of the minority report, Osoba and Usman had recommended that the minimum age of 30 as part of the qualifications for a person to be eligible to contest for the offices of president or governor⁴². They were opposed to the immunity clause that confers immunity on President, Vice President, Governor and Deputy Governor as they believed that the clause has the tendency to shield the leaders from being prosecuted for corruption. Furthermore, they were of the opinion and so contended that immunity clause contradicts the principle of equality before the law⁴³. The duo also supported the appointment of a prime minister for the sole purpose of diffusing power from the executive president⁴⁴. It is pertinent to note that minority report opposed the concept of state citizenship as it preferred national citizenship as they believed that national citizenship unlike state citizenship would have given the country a better national outcome thereby curbing all the incessant calls for restructuring⁴⁵.

⁴²Bayo Ogunmupe, Interrogating minority report & draft constitution of 1979 <<https://guardian.ng/art/interrogating-minority-report-draft-constitution-of-1976/>> accessed on 10/10/2024 at 2:53pm

⁴³ ibid

⁴⁴ ibid

⁴⁵ ibid

3.3 Constituent Assembly

The Constituent Assembly (CA) was an elected body that was saddled with the responsibility of carrying out further considerations and deliberations in respect of the draft document of the Constitution Drafting Committee of 1979. The rationale behind the constituent assembly was to give room for wider considerations and deliberations by Nigerians as it pertains to the proposed 1979 Constitution which the CDC had the mandate to prepare the draft document. In the speech of Murtala Mohammed during the inauguration of the CDC, he observed the poor state of affairs in the country at the time and went on to propose the drafting of a new constitution which he said should be home grown and would be a panacea for the poor state of things in the country at the time. Hence, in reeling out the terms of reference to the CDC, he gave credence for the need for an elected constituent assembly which would be made of elected officials from different part of the country and then mandated the CDC to submit the draft document upon conclusion to the constituent assembly for further deliberations and considerations with the ultimate aim making amendments to the draft document and then subsequent ratification. This was to be done by the constituent assembly after the members that make up the said assembly would have conferred with members of their respective constituents so as to reflect the views and aspirations of these constituents in the final document which was to be enacted as the 1979 Constitution.

Accordingly, following the submission of the report and/or draft document of the CDC in September 1976, an elected constituent assembly (CA), headed by two senior judges of the Nigerian Supreme Court, was constituted to debate the draft constitution. It is pertinent to note that neither body, to wit; the CDC and the CA, however, had the power to adopt the constitution, a prerogative that the regime reserved for its highest decision-

making organ, the Supreme Military Council⁴⁶. The Constituent Assembly met between October 1977 and June 1978 and ratified the recommendations of the Constitution Drafting Committee for a Federal, Presidential system of government modelled on the American system. This was to include a bicameral legislature at the federal level, a unicameral legislature at the state level, and a four-year tenure for elected officials at both the federal and state levels. It also backed the recommendation of a multi-party system, separation of powers between the arms of government, a division of powers based on a system of enumerated powers for the federal government and mostly residual powers for the states⁴⁷.

3.4 The 1979 Constitution of Nigeria

Suffice to say that the draft constitution which the Constituent Assembly submitted to the Federal Military Government suffered 17 amendments by the time it was finally promulgated by the regime in 1979⁴⁸.

On 1st October, 1979 civilians took over the reins of power and the new constitution replaced Nigeria's cabinet style of government with the United States of America style of Presidential system of government and introduced centralized features introduced into Nigeria's federal system. The President was both head of state and head of government, commander in chief of the armed forces. The president was chosen by the electorates in a general election. He did not appoint his ministers from the parliament unlike the previous constitution. There was also an executive governor for each state who was the chief executive of the state. All of these, was in an effort to enhance the

⁴⁶ Chidi A. Odinkalu, *The Management of Transition to Civil Rule by the Military in Nigeria (1966-1996)* p.46-47

⁴⁷ *ibid*

⁴⁸ *ibid*

Federal government's ability to deal with national problems and thereby hold the country together.

The 1979 Constitution made provision for separation of powers between the three branches of government to wit; the Executive, Legislature and Judiciary. The Constitution provided for complete freedom for the people to choose all their representatives on the basis of universal suffrage with secret ballots. The 1979 Constitution also sought to reduce ethnic tensions by affirming the differences among Nigeria's ethnic group under a robust federal structure and through such concepts as federal character and the fundamental objectives and directive principles of state policy.

The legislature was bicameral which consisted of the Senate and House of Representative. The Senate had 95 members while the House of Representatives had 450 members. The states, on the other hand, had a unicameral legislature. The legislature had the power to impeach the president whilst the state House of Assembly had the powers to impeach the Governor.

The Judicial service commission was reintroduced and it had the powers to make recommendations of Judges for appointment subject to assent by the President and the screening by the legislature. The judiciary was also given the power to interpret the constitution and declare acts that are contrary null and void.

The 1979 Constitution also made provision for immunity clause in respect of persons who occupy the positions of President of Nigeria, Vice President of Nigeria, Governor of a state and Deputy Governor. The import of this provision was that the holders of these offices shall be immune from any civil or criminal proceedings instituted against them while in office. Furthermore, the 1979 Constitution provided a good framework for solving the nation's social economic, and political problems, albeit, it lasted only

until December 1983 as it suffered certain setbacks and was frequently abused and violated by the political class⁴⁹.

⁴⁹ *ibid*

CHAPTER FOUR

A CRITIQUE OF THE LEGISLATIVE DRAFTING FRAMEWORK OF THE 1979 CONSTITUTION OF NIGERIA

This chapter seeks to assess, analyze and evaluate the legislative drafting framework of the 1979 Constitution of Nigeria, identify the pitfalls discernable therefrom, extrapolate how the legislative drafting framework ultimately impacted the final draft document of the 1979 Constitution of Nigeria and proffer possible explanations on how the said legislative drafting framework of the 1979 Constitution of Nigeria could have been carried out differently.

4.1 The Terms of Reference as Contained in the Speech of General Murtala Mohammed vis-à-vis the final draft of the 1979 Constitution of Nigeria

The terms of reference in General Murtala Mohammed's speech to the Constitution Drafting Committee (CDC) was intended to be very critical and pivotal in guiding the process that led to the drafting of the 1979 Constitution of Nigeria. These terms were designed to outline the broad goals and framework for a return to civil rule and a democratic system of governance amongst many other things.

Accordingly, the transition programme announced by the regime of General Murtala Muhammed was preceded by a major debate in the Nigerian media. The debate began with the announcement that the regime intended to implement a speedy transition to civil rule. Two major subjects of debate were, (a) the length of time that such a programme should take, and (b) the main activities to be included in it. While there was a general consensus that the programme should include a constitution-making process, a lifting of the ban on politics and elections leading to the formal disengagement of the military from politics, opinions differed as to how much time would be required to

accomplish these. This debate was closed by the Independence Day broadcast of General Mohammed in October 1975 where he stated thus:

“The Supreme Military Council has approved a five-stage programme designed to ensure a smooth transition to civil rule by those elected by the people of this country. During the first stage, the States issue will be settled and any new state created will be fully established. The Committee on States will submit its report in December 1975 and the preliminary steps for the establishment of new states will be completed by April 1976. Meanwhile, a drafting committee on the Constitution will be appointed this month and will have up to September 1976 to complete its work on a first initial [sic] draft constitution. In stage II, the newly created states will be given time to settle down before the entire Federation embarks upon a systematic and deliberate reorganization of the local government set up. This reorganization will lead to elections at local government level on individual merit without party politics. Arising from this, there will then be a Constituent Assembly, partly elected and partly nominated. The purpose of this Assembly is to consider and accept the draft constitution. This second stage will last two years, it will be completed by October 1978. Stage III will be a preparatory stage for elections. The ban on political activities will be lifted in October 1978. Political parties can then be formed in preparation for the final stages in which elections will be held into legislatures at State and Federal levels, as prescribed by the new Constitution. The two elections make up stages IV and V. These two stages are expected to be completed within one year and we intend to hand over power to a democratically elected government of the people by October 1979”⁵⁰.

⁵⁰ Chidi A. Odinkalu, *The Management of Transition to Civil Rule by the Military in Nigeria (1966-1996)* p.43-44

True to its word, the regime constituted an (all-male), 50-member, Constitution Drafting Committee (CDC) three days later, which later became a 49-member Constitution Drafting Committee following the voluntary withdrawal of Chief Awolowo from the committee.

The CDC was inaugurated on 18th October 1975 by General Mohammed and given its terms of reference which included the 7 key points listed below:

- i. the creation of political institutions which ensure maximum participation and consensus and orderly succession to political power
- ii. the elimination of cut-throat political competition based on a system of winner takes-all
- iii. the development of consensus politics and government, based on a community of all interests rather than the interests of sections of the country
- iv. the elimination of over-centralization of power in a few hands and the decentralization of power as a means of diffusing tension
- v. a careful definition of the powers and duties of the leading functionaries of government; the creation of a system of government in which the president and vice-president are elected with clearly defined powers, and are accountable to the people;
- vi. and the evolution of a free and fair electoral system which ensures adequate representation of the cross-section of the nation at the centre⁵¹.

Furthermore, it is worthy of note that in his inaugural speech to the CDC, General Murtala Mohammed spoke very clearly and explicit as to what he had in mind that informed his decision to set up the CDC for purposes of coming up with a draft

⁵¹ ibid

Constitution for Nigeria as well as the very apparent challenges that had eaten very deeply into the fabrics of the Nigerian society and how he believed that this draft document which was to be a people driven document would address the myriad of challenges and serve as a foundation for uniting Nigerians.

The speech of General Murtala Mohammed inaugurating the CDC and communicating their terms of reference, signified the commencement of drafting process of the 1979 Constitution of Nigeria for public discussion. Therefore, the CDC began the process of drafting the 1979 Constitution of Nigeria and reflected some of the broad objectives and ideas as contained in the speech of General Murtala Mohammed but with some compromises and adjustments in the process of drafting and these compromises was much later considered mistakes made by the CDC. Thus, Professor Ben Nwabueze who was a member of the CDC confirmed that there are many flaws and many errors in the content of the constitution and admitted that he is partly responsible because he was a member of the CDC that was set up by the Military government in 1978⁵². He posited that the non-justiciability of the fundamental objectives and directive principles of state policy as contained in Chapter 2, and the concentration of powers in the center are some of the cardinal flaws in the 1979 constitution⁵³ which has now been inherited and/or transplanted into the 1999 Constitution. Furthermore, he opines that the CDC led by Chief Rotimi Williams were so overwhelmed with the feeling of patriotism that they thought that the most effective way to achieve unity of Nigeria was by having a very strong central government⁵⁴.

⁵² Vanguard Newspaper interview of Prof. Ben Nwabueze <<https://www.vanguardngr.com/2013/03/the-mistakes-rotimi-williams-and-i-made-about-nigerias-constitution-nwabueze/>> accessed on 12/11/2024 at 13:20 pm

⁵³ ibid

⁵⁴ ibid

From the foregoing, it comes out indubitably clear that the CDC led by Chief Rotimi Williams went outside the scope of the drafting instruction as issued to them by the instructor (General Murtala Mohammed) vide his inaugural speech setting up the committee and the specific terms of reference contained therein. The CDC for reasons which have been described by Prof. Ben Nwabueze as been overwhelmed with the feeling of patriotism and been anxious that the most resourceful means to keep the country together as one indissoluble nation, was by instituting a constitutional structure which will galvanize the country's various parts together towards the center under a presidential system which has a single executive head at the national level. This move was a fundamental mistake as it frontally conflicts with the unambiguous terms of reference given to them. What this means is that, the CDC inadvertently formulated its own drafting instruction and/or terms of reference from what was issued to it by the drafting instructor.

4.2 Presidential System of Government adopted by the Williams' Drafting Committee

The Chief Rotimi Williams' constitutional drafting committee of 1979, changed the political form of government from Parliamentary system to Presidential as the constitutional drafting committee adopted the Presidential system of government for Nigeria in the 1979 Constitution of Nigeria⁵⁵. It is worthy of note that a cursory look at the drafting instruction issued to the 1979 constitutional drafting committee as can be gleaned from the speech of General Murtala Mohammed, there was nowhere in the terms of reference where the committee was instructed to change the form of government that was in operation in Nigeria at the material time. However, the 1979 constitution drafting committee in its wisdom decided to go outside the scope of the

⁵⁵ NILDS – CMLD (2020) p.229

drafting instruction issued to it by unilaterally changing the form of government that was in operation in Nigeria and then proceeded to introduce a new form of government that was completely unknown to Nigeria.

It is quite surprising that whilst the 1979 constitution drafting committee was had as part of its terms of reference to eliminate over-centralization of power in a few hands and was saddled with the task of decentralization of power, the drafting committee willfully disregarded this very clear and expression drafting instruction by changing the parliamentary form of government which Nigeria had practice long before its independence⁵⁶ to a presidential system of government. Suffice to say that the parliamentary system of government effectively commenced in Nigeria in 1952 when the Macpherson Constitution of 1951 came into operation⁵⁷. From 1952 to 1966 which amounts to a cumulative period of 14 years, all the levels of government at the national level, Northern, Western, Eastern and Midwestern regions, operated on the basis of the parliamentary system⁵⁸. The parliamentary system that was in operation in Nigeria was based on the British Westminster Parliamentary model by which the offices of Head of State (the British Monarch) and Prime Minister are separated and headed by different persons, with the latter leading the executive branch as part of a cabinet whose members, including the Prime Minister, are all elected members of parliament⁵⁹. Thus, the parliamentary system of government that was practiced in Nigeria completely aligned with one of the terms of reference as contained in the drafting instruction issued the 1979 constitution drafting committee to wit; the elimination of over-centralization of power in a few hands and the decentralization of power as a means of diffusing

⁵⁶ NILDS -CMLD (2020) ibid

⁵⁷ NILDS -CMLD (2020) p.230

⁵⁸ NILDS -CMLD (2020) ibid

⁵⁹ NILDS -CMLD (2020) ibid

tension. Consequently, the adoption of American-style presidential system of government by the Williams' drafting committee of 1979 was at variance with the draft instruction issued the committee as the features of the said American-style presidential system of government over-centralizes power in a single individual known as the President and does not in anyway seek to decentralize power. The negative effects of over-centralization of power as envisaged by the presidential system of power cannot be overstated as this over-centralization leads to arbitrariness, corruption and highhandedness. Also, the rising tension in different sections of the country is as a result of the presidential system of government which seeks to centralize governmental powers in the President. The American-styled presidential system of government that was adopted by the Williams' drafting committee introduced executive immunity otherwise called immunity clause. The immunity clause as introduced in the 1979 constitution by the Williams' drafting committee was as a result of the adoption of the American-styled Presidential system of government in Nigeria. Immunity can be defined as exemption from performing duties which the law generally requires other citizens to perform, or exemption from a penalty or burden that the law generally places on other citizens. It means freedom from duty or penalty, an exception from any charge, duty, tax or imposition⁶⁰. It cannot be gainsaid that this executive immunity conferred on the President and Governors by virtue of the immunity clause introduced in the draft document by the Williams' draft committee which later metamorphosed into the 1979 Constitution, has given rise to a lot of executive rascality, wanton corruption, abuse of

⁶⁰Agbo Friday Ojonugwa; Daniel Philemon Saredau & Grace Perpetual Dafieli; "A Comparative Analysis of Immunity Clauses in Nigeria, United State of America, and Austrailia: Should They be Retained or Repealed?" <file:///C:/Users/Hp/Downloads/A_COMPARATIVE_ANALYSIS_OF_IMMUNITY_CLAUSES_IN_NIGERIA_UNITED_STATE_OF_AMERICA_AND_AUSTRALIA_SH.pdf> accessed on 8/01/2025 at 8:54 pm

office and power by most of the persons that have occupied executive positions in Nigeria.

At the benefit of hindsight, General Murtala Mohammed envisaged all the negative effects and/or impact of over-centralization of power, hence, in his speech to the Williams' drafting committee, he instructed the committee to in the course of carrying out its mandate to draft a new constitution for Nigeria, to eliminate over-centralization of governmental power as well as the need for decentralization of power in order to eliminate tension in the country. However, the draft committee in carrying out its mandate, jettisoned this term of reference. Be it noted that Prof. Ben Nwabueze who was a member of the Williams' drafting committee admitted that one of the cardinal flaws of the 1979 Constitution, was the over concentration of powers in the center and went on to partly claim responsibility for this as he was not just a member of the drafting committee but chairman of one of the sub-committees that produced Chapter II of the Constitution⁶¹.

4.3 Federalism as adopted by the Williams' Drafting Committee

The adoption of the American-style Presidential system of government under the 1979 Constitution by the Williams' drafting committee in place of the British-style Parliamentary system, gave rise to the centralizing features introduced into Nigeria's federal system. It is worthy of note that this centralized federal system as introduced by the 1979 Constitution, was retained in the 1999 Constitution⁶² and it is believed to have done more harm than good. The adoption of the American-styled Presidential system of government and the centralizing features introduced to our federal system by the

⁶¹Vanguard Newspaper Interview of Prof. Ben Nwabueze <<https://www.vanguardngr.com/2013/03/the-mistakes-rotimi-williams-and-i-made-about-nigerias-constitution-nwabueze/>> accessed on 8/01/2025 at 8:32 pm

⁶² NILDS -CMLD (2020) ibid p.232

Williams' drafting committee in the draft of the 1979 Constitution, are two of the most significant errors made by the said drafting committee as Nigeria as a nation still suffers from these errors in view of the fact that the centralized federal system adopted by virtue of the Presidential system as introduced by the drafting committee, was retained in the 1999 Constitution⁶³. The adoption of the American-styled Presidential system of government by the Williams' committee took Nigeria away from a balanced federation wherein powers and resources of the federal government and regions were independently controlled and evenly distributed to a federation with more powers and resources vested in the federal government at the detriment of the states.⁶⁴

The Williams' drafting committee having jettisoned the clear instructions issued to it in terms of eliminating over-centralization of power, appeared to have been very anxious to keep Nigeria together as an indissoluble nation, especially after the sad events of the Nigerian Civil War during which so many lives were lost.⁶⁵ In their wisdom, they felt that the best way to realize this was by instituting a constitutional structure which will pull the various parts of the country towards the center under a presidential system which has a single executive head at the national level who is elected through a nation-wide presidential election, with the entire country as the single constituency of the candidates.⁶⁶ The Williams' also felt that by concentrating power and resources in the federal government and weakening the states in the process, the possibility of any state challenging the powers of the federal government and, by

⁶³ *ibid*

⁶⁴ *Ibid* p.233

⁶⁵ *ibid*

⁶⁶ Paul J. Kaiser (2005). "Federal Republic of Nigeria Briefing Paper", available at <https://secure-media.collegeboard.org/apc/ap05_comp_govpol_nige_42255.pdf> accessed on 11/01/2025 at 10:39> pm

extension, the federation as a whole would be greatly minimized if not entirely eliminated.⁶⁷

⁶⁷ NILDS -CMLD (2020) *ibid*, p.233.

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

In this chapter, the research delves into the culmination of the dissertation journey by presenting a comprehensive overview of the findings, recommendations, contributions to knowledge, and areas for further study. Through an in-depth examination of legislative drafting instructions and the drafting of the 1979 Constitution of Nigeria, the research aims to provide actionable insights for policymakers, instructors and drafting professionals seeking to enhance the quality and effectiveness of legislation.

5.1 Summary of Findings

Having reviewed relevant literature and a cautious discussion of major research problem which centered on the appraisal of legislative drafting instructions and the drafting of the 1979 constitution of Nigeria, the study has been able to establish the following key findings:

- i. There is the absence of a binding force of the Bill Drafting Manual in Nigeria on all drafters.
- ii. Available evidence reveals that the Bill Drafting Manual that serves as a standard manual, guide and/or format for issuing drafting instructions in Nigeria is not made mandatory and/or compulsory on instructors, policy makers and drafters.
- iii. There is a lack of synergy between policymakers, drafting instructors and the drafters in the drafting process in Nigeria. Indications showed that where there is robust collaboration between the drafting instructors, policymakers and the drafters in the drafting process, the quality and effectiveness of the legislation will be greatly enhanced.

- iv. Available evidence reveals that there is non-adherence with the five stages of legislative drafting as proposed by Thornton and this non-adherence poses great challenge to the drafting of qualitative and effective legislation in Nigeria.
- v. Available evidence further reveals that there is no institutionalized mechanism for post legislative scrutiny in Nigeria, to enable the assessment, of the effectiveness, viability, practicability and workability of implemented legislation.

In summary, the dissertation presents a comprehensive analysis of how the issuance of proper legislative drafting instructions and the understanding of same as well as strict adherence to the instructions by the drafter is instructive for the drafting of quality and effective legislation as this was not the case with the Williams' drafting committee that was saddled with the responsibility of drafting the 1979 Constitution. The lack of understanding of the terms of reference as contained in the legislative drafting instruction issued by General Murtala Mohammed to the Williams' drafting committee and the non-adherence to the said instructions by the committee was made manifestly obvious in the final draft which was eventually enacted as the 1979 Constitution. Sadly, virtually almost all the provisions in the 1979 Constitution were retained in the 1999 Constitution which is still operational in Nigeria till date.

5.2 Recommendations

From the foregoing findings, the study recommends the following:

- i. The Bill Drafting Manual operational in Nigeria should be amended to introduce a clause that makes it mandatory for all instructors, policymakers and drafters to strictly adhere to all the checklist contained therein in terms

of issuing legislative drafting instructions and used in the drafting process. This will greatly enhance the quality of proper drafting instructions to be issued to drafters by instructors/policymakers and will in turn, aid the drafters in understanding and analyzing the said instruction.

- ii. There should be an amendment of the Bill Drafting Manual in Nigeria which makes the Manual binding on all policymakers and drafter. The introduction of a binding force of the Bill Drafting Manual in Nigeria will help to regulate the drafting process and enhance the drafting of quality and effective legislation as policymakers and drafters will be compelled to comply with the checklist as stipulated therein.
- iii. There should be effective collaboration between policymakers, instructors and drafters in the drafting process to enable effective consultation in the drafting process.
- iv. Drafters should strictly adhere to drafting instructions issued to them by complying with the five stages of legislative drafting as proposed by Thornton.
- v. There should be the establishment of an independent body that will be saddled with the responsibility of systematically assessing the impact, effectiveness, practicability and workability of new legislation in order to ascertain whether or not the legislation was drafted in compliance with the Bill Drafting Manual.

5.3 Conclusion

The objective of the study was to carry out a thorough assessment of legislative drafting instructions and the drafting of the 1979 Constitution of Nigeria. The study has reviewed relevant literatures in this regard. It has also examined the importance of

legislative drafting instructions, the need for the issuance of proper legislative drafting instructions by the instructor, proper understanding and analysis of the instructions by the drafter as well as adhering to drafting instructions by complying with the five stages of legislative drafting as proposed by Thornton in order to be able to come up with qualitative and effective legislation that underscores the essence for which the policy was formulated.

5.4 Contribution to Knowledge

This research contributes to the understanding of legislative drafting instructions, emphasizing the importance of the issuance of proper legislative drafting instructions, good understanding of same and strict adherence/compliance with the instructions by the draftsman as a precursory for the drafting of quality and effective legislation that will reflect the essence of the policy behind such legislation.

This research contributes to knowledge by:

- i. Highlighting the significance of the issuance of written legislative drafting instructions in the drafting process in Nigeria.
- ii. The need for legislative drafters to ensure strict compliance with the five stages of legislative drafting as proposed by Thornton as this will enable them properly analyze the legislative drafting instructions issued as well as aid them in having a good understanding and comprehension of same.
- iii. The need for legislative drafters to adhere and comply with the Bill Drafting Manual operational in Nigeria.
- iv. Offering recommendations for the amendment of the Bill Drafting Manual which is a standard manual, format or guide for issuing legislative drafting instructions in order to make compliance with this

Manual mandatory and compulsory by all policymakers, instructors and drafters.

- v. Offering recommendations for the Bill Drafting Manual to have binding force on all policymakers, instructors and drafters in Nigeria.
- vi. Identification of certain pitfalls in the draft of the 1979 Constitution occasioned by non-compliance with the drafting instructions by the Williams' constitution drafting committee.
- vii. Having identified certain pitfalls in the draft document of the 1979 Constitution and same retained in the 1999 Constitution, the need for a constitutional amendment to correct these fallouts.
- viii. Policy Recommendations: By proposing recommendations for the establishment of an independent body that will be saddled with the responsibility of assessing the impacts, practicability and workability of every legislation that is enacted.
- ix. The research emphasizes the need for effective collaboration between policymakers, instructors and drafters in order to have quality legislation.

5.5 Suggested Area for Further Studies

This research acknowledges that it is not practicable to cover all thoughts in this study as it relates to an appraisal of legislative drafting instructions and the drafting of the 1979 Constitution of Nigeria.

The study also acknowledges the need for the amendment of the Bill Drafting Manual in Nigeria which contains certain standard checklist for issuing drafting instruction and serves as a standard guide for legislative drafting in Nigeria and suggests that further

research can focus on the possibility of formulating penalties that would accrue to instructors and drafters who fail and/or refuse to comply with the various checklists contained in the manuals in order for the manual to have binding force.

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