

A LEGISLATIVE DRAFTING ANALYSIS OF THE FEDERAL CAPITAL TERRITORY
CUSTOMARY COURT ACT, 2007

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DECLARATION

I hereby declare that this work is the product of my own effort; undertaken under the supervision of Professor Edoba B. Omoregie, SAN and has not been presented elsewhere for the award of a degree or certificate. All sources have been duly distinguished and appropriately acknowledged.

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CERTIFICATION

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This dissertation titled “A Legislative Drafting Analysis of The Federal Capital Territory Customary Court Act, 2007” by Abel Simpa EHUSANI has been read and approved as having met the requirements for the award of Master of Laws in Legislative Drafting (LLM) of the National Institute for Legislative and Democratic Studies/University of Benin.

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DEDICATION

I humbly dedicate this dissertation to the Almighty God. Blessed be the God and Father of our savior Jesus Christ who has blessed us with every spiritual blessings in heavenly places in Christ just as he chose us in him before the foundation of the world that we should be holy and without blame before him in love, having predestined us to adoption as sons by Jesus Christ to himself according to the good pleasure of his will, to the praise of the glory of his grace by which he made us accepted in the beloved.

Also, this research is dedicated to Mr. Bernard and Mrs. Grace Ehusani (my parents), Rev. Fr. George Ehusani, Hon. Justice Stanley Adekunle Lawal, Hon. Olufemi Oreka Yemisi, Dr. Tonye Clinton Jaja, my superstar wife Simpa Opeyemi Blessing and my amazing children.

Abel Simpa EHUSANI
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Evidence Act Cap. E.14 Laws of the Federation of Nigeria 2004 - Nigeria

Federal Capital Territory Customary Court Act 2007 - Nigeria

Kaduna State Customary Courts Law 2001(as amended) - Nigeria

Lagos State Customary Courts Law 2018 - Nigeria

Rivers State Customary Court Law No. 3 2014 - Nigeria

LIST OF ACRONYMS/ABBREVIATIONS

CA:	Court of Appeal
CAP:	Chapter
CCA:	Customary Court of Appeal
CEDAW:	Convention on the Elimination of All Forms of Discrimination against Women
CVA:	Civil Appeal
FCT:	Federal Capital Territory
FCTCC:	Federal Capital Territory Customary Court
LPELR:	Lawpavillion Electronic Law Report
NWLR:	Nigeria Weekly Law Report

ABSTRACT

The Federal Capital Territory Customary Court Act, 2007 (hereafter called “the Act”) is the enabling legislation establishing the Federal Capital Territory Customary Court (hereafter called “the FCTCC”). Obsolete drafting dimensions, convoluted expressions, ambiguous provisions and the use of gender specific terms which indicate ambiguities and unintended inconsistencies are some of the problems with the Act which necessitated this research. The objectives of this dissertation included a review of the long title of the Act so that it captures and reflects its purpose to a certain extent. The study recommended the use of marginal notes effectively as internal aids to Statutory Interpretation. This dissertation proposed an amendment of the FCTCC to comply with plain language and gender-neutral drafting principles. Enhanced applicability of the jurisdiction of the FCTCC in the administration of Justice is another gap filled. The study also identified legislative drafting improvements that necessitated the proposed amendment bill annexed to this dissertation.

Using a doctrinal research method to actualize all the objectives and to come up with the findings tied to all the questions of the research, both primary and secondary sources were used. The primary sources include: Constitution of the Federal Republic of Nigeria, 1999 (as altered), the Federal Capital Territory Customary Court Act 2007, some recent legislations like the Students Loans (Access to Higher Education) Act, 2023 and judicial decisions while the secondary sources include: Legislative Drafting journals, articles, Law review texts, online/internet sources among others, to identify the weaknesses and gaps in the Act.

The finding on the first objective is that the use of bold/capital/uppercase letters in the long title is not justifiable. The research addressed the second and third objectives by identifying the absence of marginal notes for sections 39, 40, 41, 42 and 43 with a proposed amendment with

relevant marginal notes. The fourth research objective scrutinized the intricacy present in both the language and the stylistic elements of the legislation; as a result, it opened up the need to amend sections 2, 25, 14 and 18 adopting plain language and gender-neutral terms. Also, the fifth objective unveiled aids in improving the quality of legislations.

This research recommended an amendment to correct the wrong/inappropriate use of uppercase/bold/capital letters in the long title and the use of the new and existing enacting formula. In line with the findings, the proposed amendment bill contains an explanatory memorandum which offers sufficient clarification on the intentions of the newly introduced legal framework, helping to interpret the act in case of disputes about its actual purpose. This research further provided a proposed amendment to sections 2, 25 and 14 of the Act with adequate use of clarity, simplicity and plain language. This dissertation contributes to law reform and development in Nigeria, advocating for a more effective and culturally sensitive approach to the administration of justice in the FCT. A Bill for an Act to amend the Federal Capital Territory Customary Court Act is proposed and added as an annexure to this dissertation.

Word Count: 493 Words

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CHAPTER ONE

INTRODUCTION

The evolving landscape of legislative drafting has led to a transition from conventional drafting methods to a plain language approach. This modern style emphasizes clarity and simplicity, incorporates gender-neutral and consistent terminology, minimizes ambiguity and superfluous legal jargon, and facilitates an effective translation of legislative intent. This dissertation aims to explore the guiding principles of legislative drafting as they pertain to the Federal Capital Territory Customary Court Act of 2007, especially considering that this legislation is now over ten years old.

This chapter presents the background of the study, statement of the research problem, research questions, aims and objectives of the study, scope and limitation of the study, significance of the study, research methodology and a number of core literature reviewed and consulted as guide for this research, the findings and recommendations

1.1 Background to the Study

Legislative drafting, as a professional skill, serves as a cornerstone essential to the efficiency of law-making, interpretation, and application. The unique characteristics, techniques, and ideal qualities of legislative drafting provide insight into the answers that emerge from questions arising through careful scrutiny or practical engagement with legislative instruments.

The systematic methodology for legislative drafting, initially advocated by Garth Thornton¹, encompasses several key stages. First, there is the Understanding of the instruction, which begins with the legislative drafter receiving the directive. Second, the Analysis phase involves the drafter conducting thorough research on the subject matter of the proposed legislation. Third,

¹ H Xanthaki, Thornton's Legislative Drafting, 5th edn. Bloomsbury (2013) 145-162

during the Design phase, the drafter outlines the structure of the draft Bill. Lord Thring, a leading authority on legislative drafting, asserts that a draft must articulate the law, specify the authority responsible for its enforcement, and delineate the procedures for its implementation.² Following this is the Composition stage, where the drafter must ensure that the legislative language is appropriate, characterized by clarity, simplicity, and regulatory precision, among other factors. Finally, the Scrutiny phase entails a comprehensive review of the draft to ensure quality and effectiveness in language use.³ This research is an analysis of how effectively or otherwise each stage leading up to the Act establishing the FCTCC has detailed considerations of the identified stages.

Legislative drafting in Nigeria follows a formal, precise, and structured methodology. This is crucial for the development of clear, consistent, and enforceable laws. Legislative drafting involves both style and methodology, which are influenced by Nigeria's legal heritage as a former British colony, blending common law principles with local adaptations. The British legislative drafting style and methodology as a colonial legacy greatly influence how laws are drafted in Nigeria especially as British Parliament drafted Nigerian Laws even up to 1960.⁴

Modern legislative drafting remains a structured process that ensures laws are clear, precise, and compliant with constitutional and legal standards. The style prioritizes plain language, technical accuracy, and the careful arrangement of sections, while the methodology follows a formal sequence from policy formulation to enactment.⁵

² V C R A C Crabbe. *Legislative Drafting*, Cavenish Publishing, (1998), pp. 148-150

³ E B Omoregie, *From Policy to Law: The Role of the Legislative Drafter*, Legislative Issue Brief, (2023) Issue 1 < <http://www.nils.gov.ng/>> accessed 10 September 2024

⁴ H Onwe, *Groundwork of Legislative Drafting* Snaap Press (Nig.) Ltd., (2009) 3

⁵ Wilson, Goddey, and Alafuro Epelle. 'Public Policy formulation and implementation in contemporary Nigeria.' *International Journal of Research in Social Sciences* 8.6 (2018): 175-185.

The drafting style in Nigeria further prioritizes clarity and simplicity, avoiding unnecessary legalese. The goal is to make laws understandable to their intended audience, which includes legislators, judges, legal practitioners, and the general public. Each provision is structured in a logical flow, starting with the title, preamble, and enacting clauses. Sentences are concise, avoiding overly complex constructions.⁶ Drafters use specific and consistent terms to avoid ambiguity. Definitions sections are included to clarify key terms, ensuring that words are used in the same way throughout the document. Terms, references, and legal principles are consistent with the constitution, other laws, and judicial precedents. Compliance and conformity with the Constitution, as the highest legal authority in the nation, remains unwavering; any law that contradicts the Constitution is rendered null and void to the degree of that contradiction. Drafters also ought to carefully consider existing laws to ensure there are no conflicts or overlaps. New legislation often repeals or amends older statutes to avoid contradictions.⁷

Legislations are divided into parts, chapters, sections, and subsections. This hierarchical structure enhances readability and organization. The long title of the Act explains the purpose and scope of the legislation, while the explanatory memorandum sets out the detailed description of the purpose and intention behind the law while sections now have marginal notes or headings to summarize their content, helping readers navigate through the legislation more easily.⁸

The Federal Capital Territory Customary Court Act 2007 is the enabling act establishing and defining jurisdictional parameters for the customary court in the Federal Capital Territory.

⁶ T C Jaja, 'Strategies for Improvement of the Quality of Bills and Legislative Drafting in Nigeria.' *IJLDLR* 8 (2019): 49.

⁷ O Chukwuka. 'Examination of issues of constitutional consideration by a legislative drafter in drafting a bill.' *NIALS International Journal of Legislative Drafting* 3.3 (2020): 90-109.

⁸ I O Muheeb, 'The trajectory of the legislature, lawmaking and legislation in Nigeria.' *The Nigerian National Assembly* (2019): 33-56.

The Act has XIV parts and 67 Sections and a close consideration of the Act reveals in line with Parts I and II that there exist 43 courts distributed throughout the various expanses of Abuja the power of control in Nigeria and each court sits properly constituted by a panel of 3 judges who are all Legal Practitioners with specified number of years of post-call to bar experience.

With the understanding of the primary function of the judiciary which is interpretation of statutes, the Federal Capital Territory Customary courts are undeniably daily faced with interpretation of the act to meet the ends of justice and to resolve litigation claims in suits instituted by parties.

Part III of the Act contains the principally ambiguous section and legislative sentences laced with absurdities and confusion.

Also, Parts IV, V & VI of the Act mentions jurisdiction of the FCTCC, laws to be administered and the parameters of customary law principles applicable, the existing laws that govern practice and procedure and the powers available to the court with regards to specific orders the court can make and the binding effect upon persons within the territorial limits of the jurisdiction of the court.

Parts VII provides for supervision and administrative control of the court with the powers that the crown of Appellate court to exercise some measure of influence without necessarily clogging the wheels of the independence of the judges (Members and Chairmen) of the FCTCC

Part IX deals with appeals, Part X creates offences that the FCTCC has jurisdiction to try with punishments prescribed.

Parts XI, XII and XIII contains the financial provisions, delegation of powers to make rules of court the transition and miscellaneous provisions respectively.

Part XIV has the Interpretation and Citation sections.

This dissertation thoroughly examines the complete framework of the Act that established the FCTCC, specifically highlighting ambiguities, loopholes, and uncertainties arising from inadequate drafting. When viewed through the lens of contemporary legislative drafting practices, these issues can be addressed. The research ultimately advocates for amendments to the relevant sections of the Act to ensure that they accurately convey the legislature's intentions, aligning with a comprehensive understanding of the legislation as a whole.

1.2 Statement of the Problem

Legislative drafting, as a professional process of preparing a draft document for enactment, involves intricate specifications that demand deliberate attention to achieve excellence.⁹ The Federal Capital Territory Customary Court Act is a 2007 legislation and it inevitably falls into the category of laws that are traditionally not clear, precise, and compliant with unique drafting principles and techniques, constitutional requirements and legal standards. The Act lacks the clarity and simplicity, plain language, gender neutral and consistent terms which indicates the ambiguity and unintended inconsistencies. For example, the lack of clarity and simplicity in Section 14 which contains the words; “...over persons within the Federal Capital Territory, who submit to the jurisdiction of the court...” has led to the misconception that anyone can make the decision whether or not to submit to the jurisdiction of the court, leading to preliminary objections challenging the court’s jurisdiction.

The Federal Capital Territory, Abuja is a city in Nigeria like no other. it was founded on the need for a place that would represent to us a symbol of our oneness and national unity and indeed, a home to all Nigerians. The idea that birthed the policy finds clearer expressions with the General

⁹ M T Ladan Law, Human Rights and the Administration of Justice in Nigeria (ABU Press 2001) 42

Ibrahim Badamasi Babangida's movement of the seat of government to Abuja, December 12, 1991¹⁰

The problem with the act also finds expression in the use of gender specific terms like "Chairman" in Section 2 and "He" in subsequent sections to refer to duties. Ineffective communication of the legislative intent reveals a direct implication of the need to improve the quality of the law in the light of emerging modern legislative drafting principles.¹¹ This legislative drafting analysis of the Act establishing the FCTCC reveals pointers of poorly drafted laws and the attendant difficulty to judicial interpretation, executive implementation and public perception.

1.3 Aim/Purpose of the Research

Essentially, being equipped with the knowledge of legislative drafting principles and techniques for a better understanding of the role of legislative drafters, the aim of this research is to unravel the implications of the poorly drafted legislation as a pointer to the need for the amendment which is proposed.

Research Questions

Consequent upon the statement of the problem, the following research questions did guide as a legislative drafting compass for analyzing the Act establishing the FCTCC:

- a) To what extent does the long title of the Act capture or reflect its purpose?

¹⁰ E C Omeiza, 'Abuja: The Evolution and Development of a Federal Capital City' *Daily Trust Newspaper* (Lagos, 4 April 2021) < <https://dailytrust.com/abuja-the-evolution-and-development-of-a-federal-capital-city/> > accessed 15 September 2024

¹¹ T C Jaja, 'Judicial Interpretation of Legislation as a Source of Rules of Legislative Procedure and Legislative Drafting: A Comparative Study of United Kingdom and Nigerian Court Cases' (Comparative Law Review 2016) 149

- b) To what extent does the use of marginal notes meet standard and aid in interpretation of the Act?
- c) To what extent are the legislative drafting principles and stages relevant to style and structure for a meticulous appreciation of the purpose of the statute?
- d) To what extent does the Act comply with plain language and gender neutral drafting principles?
- e) How may Legislative Drafting techniques and principles aid in improving the quality of the Act?

1.4 Objectives of the Research

This research primarily aims to critically assess the quality of legislative drafting in the Federal Capital Territory Customary Court Act 2007. The objective is to identify the challenges and implications associated with the current legislation while suggesting necessary amendments to align it with contemporary principles. It is recognized that laws are frequently submitted to courts of competent jurisdiction for interpretation, which is essential for ensuring their proper application and facilitating a more coherent purposive approach.

This research also keenly identifies propositions in tune with the following objectives;

- a) To review the long title of the Act so that it captures and reflects its purpose to a certain extent.
- b) To recommend the use of marginal notes effectively as internal aids to Statutory Interpretation.
- c) To examine how legislative drafting principles and stages are relevant to the style and structure for a meticulous appreciation of the purpose of the Act.
- d) To review the Act and amend same to comply with plain language and gender-neutral drafting principles to a certain extent.

- e) To identify how legislative drafting techniques and principles aid in improving the quality of the Act.

1.5 Scope and Limitation of the Study

Scope:

The research study covers the Federal Capital Territory Customary Court Act of 2007, along with the fundamental principles of contemporary legislative drafting. This process is methodical, ensuring that laws are articulated clearly, precisely, and in accordance with specific drafting principles, constitutional mandates, and legal standards. The study will examine the Federal Capital Territory Customary Court Act of 2007, concentrating on its content, structure, and provisions. The analysis will be conducted within the framework of clarity and simplicity, the use of plain language, gender neutrality, and the application of consistent terminology. Additionally, it will aim to eliminate ambiguity and excessive legal jargon in order to identify deficiencies that warrant the suggested amendments.

The Study specifically concentrates on the following;

- I. The structure; introductory apparatus, the preliminary provisions, the principal provisions, the miscellaneous provisions and the final provisions of the Act, 2007
- II. Pointing out the need for clarity and simplicity use of plain language, gender neutral and consistent terms and sections with ambiguity.
- III. The annexure to this research is an amendment Bill, with identified sections and areas of the Act that improved legislative drafting principles are applicable.

1.6 Significance of the Study

This legislative drafting analysis of the Federal Capital Territory Customary Court Act 2007 is particularly significant due to the need to bring the Act in conformity with modern legislative drafting techniques. Other significant importance remain identifiable as follows:

- 1) Additional guide for Legal practitioners and lawmakers on effective legislative drafting and its importance in enhancing legal clarity and accessibility.
- 2) This study is significant because it speaks to enhancing the jurisdiction of the FCTCC in the administration of Justice.
- 3) For the purpose of ensuring that the legislative intent is not completely eroded due to poor legislative drafting.
- 4) Reflecting on appropriate guiding principles for the attainment of substantial justice at all times in the court.
- 5) Bringing to fore, the need for an amendment to correct the anomaly in the drafting and to keep the Act in tune with the Existing Laws and Legislative drafting principles.

1.7 Research Methodology

This research presents a doctrinal approach to the legislative drafting analysis of the Federal Capital Territory Customary Court Act of 2007. It emphasizes the careful examination of both primary and secondary sources to address the complexities inherent in academic and judicial contexts. This approach facilitates a clear identification of the issues related to inadequate drafting and explores how the proposed amendments can enhance the legislation effectively.¹²

A comprehensive review of relevant literature, including scholarly articles, textbooks, reports,

¹² Aliyu, A. S., Asogwa, C., & Enenche, J. A., ‘Appraisal of masters dissertation of postgraduate students of the National Institute for Legislative and Democratic Studies (NILDS), Abuja, Nigeria (2015–2021). *Samaru Journal of Information Studies*, (2022) 22(2), 29-44.

and previous projects or dissertations, will be conducted to underscore the necessity for the adoption of contemporary legislative drafting principles aimed at improving efficiency and fostering development.¹³

This research, grounded in doctrinal principles, will examine the principles of legislative drafting, law reform, and statutory or constitutional provisions to appropriately align with the identified problem and proposed solution. By adhering to guidelines for plain language drafting, utilizing gender-neutral terminology, and applying clear statutory interpretation, the analysis will lead to the conclusion that amending the inadequately drafted legislation is essential for justifying the findings of this study.

Sources of data are primarily: statutory provisions, laws, regulations, case law, rules of court. Secondary sources where law and opinion are explained: text book, articles and paper presentations that buttress the position taken in the research will be examined meticulously. How scholars particularly examined the available rules of statutory interpretation, the implication of plain language drafting and the role of legislative drafters in ensuring a more precise communication of legislative intent.¹⁴

1.8 Chapter Analysis

This research study is divided into five (5) broad chapters. Chapter one deals with the general introduction and the preliminary issues such as the background to the research study, the statement of the research problem, research questions, aims and objectives, scope and limitation of the study, significance of the study, research methodology and analysis of chapters.

¹³ Ihugba, Uzoma, 'Introduction to legal research method and legal writing'. African Books Collective, 2020.

¹⁴ Mico, Augustin. "The Drafter's role in the drafting process." PhD diss., Institute of Advanced Legal Studies, School of Advanced Study, 2012.

Chapter two begins with the Literature review, then Background to Legislative Drafting, stages of Legislative Drafting, Bills, particulars of a Bill, Particulars of an Act, Customary Law, customary courts and the contemporary role of the Federal Capital Territory Customary Court.

Chapter three is the framework of the Federal Capital Territory Customary Court Act, Objective of the Act, Summary of the Act, Background, content analysis and recommendation.

Chapter four is a critique of the Act in line with legislative drafting rules and modern drafting principles. Chapter five gives a summary of findings, recommendations, contribution to knowledge, conclusion and the annexure: “A Bill for An Act to amend the Federal Capital Territory Customary Court Act, to review the powers of the court in order to exercise jurisdiction over persons within the territorial limits of the Federal Capital Territory Abuja, and over persons outside the territorial limits of the Federal Capital Territory Abuja, who submit to the jurisdiction of the court, to prescribes the mode of its operation and supervision for speedy dispensation of Substantial Justice at little cost and time, and to promote cultural values and fundamental rights of residents of the Federal Capital Territory Abuja and for related matters 2024”

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS, THEORETICAL FRAMEWORK AND LITERATURE REVIEW

This chapter begins with the review of literature, clarifies concepts that run through the dissertation, establishes the theoretical framework and conceptual understanding that will guide the legislative drafting analysis of the Act establishing the FCTCC.

2.1 Literature Review

Since 2007 when the FCTCC Act was enacted, legislative drafting principles and style consistently record considerable improvements, scholarly interventions and presentations of modern legislative drafting realities. The research questions mapped around the central focus of the research problem identified as the implications of poor legislative drafting makes it imperative to consider, evaluate and unearth the adequacy and/or inadequacy of the various research work carried out by authors and scholars particularly in the field of modern legislative drafting trends and best practices applicable to legislative drafting in Nigeria.

Edoba B. Omoregie¹⁵ reiterated the process of transforming policy into legislation and the need to deliberately appreciate the intricacies identifiable through the stages because Nigeria's legislative framework, both at the central and municipal echelons, follows the United Kingdom model of lawmaking procedure just as, specifically, within the National Assembly, the process begins with the Initial impression of the legislative proposal during a gathering meeting, that name is announced in either the Upper or lower chamber minus further discussion. The process is followed by the Second Reading, during which the primary tenets of the Bill are presented by its sponsor in

¹⁵ Edoba B. Omoregie, 'Translating Policy to Law: Basic Guide in Legislative Drafting' *NILDS-JLR* [2022-2023] (5 & 6) 166.

the case of a Private Member Bill, or by the majority leader for an Executive Bill. Members of the Assembly are then allowed to share their views on the Bill, whether in favor or against it. A vote is subsequently held to ascertain if the Bill should progress to the Committee Stage. If the result is positive, the Bill undergoes an extensive examination within the committee, which includes public hearings. After this, the Bill is brought forward for a Third Reading in plenary, along with a report from the committee that outlines its discussions, findings, and recommendations. Members are once again given the chance to comment on the committee's report and express their support or opposition regarding the Bill's advancement. If a sufficient majority of legislators endorse the Bill, it is forwarded to the other Chamber of the National Assembly for agreement, after which it is properly formatted and presented to the President for approval. Upon receiving the President's consent, the Bill is enacted into law and published in accordance with the Acts Authentication Act. Conversely, if the President declines to provide assent, the National Assembly has the option to override this veto with a two-thirds majority vote from both chambers, thus enacting the Bill into law. This research, in adopting the fundamental guide finds a roadmap towards a detailed legislative drafting analysis of the act establishing the FCTCC

Shamsu Yahaya and others¹⁶ in reviewing the Students Loans (Access to Higher Education) Act, 2023 meticulously recognized deficiencies in the establishment of criteria for student loan eligibility, which are grounded on existing economic conditions deprived of considering potential future developments in living capacities. They pointed out lapses particularly in the drafting of that legislation given that ongoing market dynamics continuously affect minimum wage, earning potential, and other factors that will inevitably have legislative and legal ramifications for the application, interpretation, and enforcement of the relevant laws. Such shortcomings are truly

¹⁶ S Yahaya, B Lawal-Gambari, A Usman, Z Akinde and N Omoarebu, 'A Review of the Students Loans (Access to Higher Education) Act, 2023' *NILDS-JLR* [2022-2023] (5 & 6) 119-121

detrimental to the goal of enhancing access to quality higher education and as such the government policy transformed to law already encounters foreseeable impediments. This research, reflecting on this analytical perspective, highlights the inadequacies in the formulation of the Act that created the FCTCC, as it fails to adequately account for the metropolitan design of the Federal Capital Territory, contrary to the objective of the FCTCC to address cases involving all customary laws in Nigeria.

‘From Policy to Law: the Role of the Legislative Drafter’¹⁷ echoes the essentials of transforming policy to law, stages of legislative drafting and the peculiarity in the role of legislative drafters for better quality legislation. It is without a doubt that when meticulous attention is given to details regarding the entire process of lawmaking, then the process of interpretation for appropriate application would not pose so much of a difficulty. This research finds firm footing in appropriately getting out a legislative drafting analysis of the Act 2007 from the foundational appreciation of the aim of every piece of legislation.

While appreciating the foundations innate in the five stages legislative drafting made popular by Thornton¹⁸ which comprises; comprehending the policy-drafting instruction, evaluating the proposal, formulating the legislation, drafting and refining the document, and conducting a review of the draft. Good quality of a bill ultimately makes for quality legislation and brings pointers to the importance of the roles of drafters.

Tonye C Jaja¹⁹ articulated his perspective regarding the connection between legislation of superior quality and the advancement of economic growth., asserting that the notion of quality legislation

¹⁷ E B Omoregie, ‘From Policy to Law: The Role of the Legislative Drafter’ *NILDS Legislative Issue Brief* [2023] (1) 1-5 <<https://ir.nilds.gov.ng/bitstream/handle/123456789/1490/Legislative%20Issue%20Brief%20-%20From%20Policy%20to%20Law-1.pdf?sequence=1>> accessed 10 September 2024

¹⁸ Garth Thornton, *Legislative Drafting*, 4th Edition (London, Butterworths, 1996) 128

¹⁹ TC Jaja, ‘Strategies for Improvement of the Quality of Bills and Legislative Drafting in Nigeria’ 2018 <<https://ir.nilds.gov.ng>> accessed 19 September, 2024

fostering economic growth is relevant to Nigeria and other nations that prioritize development, as outlined in Section 16(2)(a)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as altered). Jaja's section stipulates that a key objective of Nigeria's economic policy and legislative framework is to enhance pecuniary increase. Using these parameters also to measure development in legislation as quality of legislative drafts also have great impact in the understanding, implementation and enforcement of laws, this dissertation further examines the impact of customary laws and how the legislation establishing the FCTCC needs to be consciously and meticulously amended to conform with developmental realities.

Bethel Uzoma Ihugba²⁰ emphasized how supreme laws remain regarded as dynamic and animate papers that serve as the foundation for the developmental path of every political entity. He further noted that while constitutions provide a general framework, they are not intended to include intricate details regarding governance structures and processes. Such specifics should be refined through laws and rules. Although it might not be essential to perpetually expand legal requirements, it is acceptable to alter specific essential components in order to adapt to changing conditions, respond to prevalent issues, and equip the state for future democratic development and economic growth. This dissertation builds upon the concept of constitutional modification by proposing amendments to the Act that established the FCTCC, highlighting that numerous legislative drafting advancements have occurred since 2007, thereby necessitating an amendment to reflect modern legislative drafting realities.

Gender-Neutral Language in Legislative Drafting in Nigeria²¹ focuses on modern lawmaking writing style with the call to mind of how the use of masculine pronouns is prevalent in the English

²⁰ B U Ihugba, 'Reconciling Constitution Alteration Themes and Federalism in Nigeria' NILDS-JLR [2022-2023] (5 & 6) 20

²¹ U E Okolocha, S Yahaya and C Chikere, 'Gender-Neutral Language in Legislative Drafting in Nigeria' NILDS-JLR [2022-2023] (5&6) 172-187

language. However, that research reveals the need for contemporary legislative drafters to deliberately prioritize precision and non-discrimination in their word choices. It further identified that it is essential for drafting to be both clear and accurate to convey the intended meaning effectively. Just as legislation is no longer solely aimed at judges and lawyers; it must also be accessible to legislators, law administrators, the public, and society at large. Drafters should indeed employ various strategies to certify that rules are flawless, accurate, and devoid of ambiguities. Gender-neutral language encompasses terms that represent both genders equally, avoiding the use of male pronouns to refer to women and vice versa. This approach employs techniques such as repeating relevant terms, eliminating unnecessary phrases, and reorganizing sentence structures from active to passive voice, provided that clarity is maintained. This dissertation therefore highlights sections of the act establishing the FCTCC with recommended amendments revealing the necessity for gender-inclusive language which is undeniably evident in the context of plain language legislative drafting.

M. A. Etudaiye²² examined interpretation and construction of statutes with a clear identification of the Golden Canon being a productive remedy against ambiguities and absurdities. The Case of *Becke v Smith*²³ it was acknowledged that the common interpretation of words and their grammatical arrangement might differ from the legislature's intended meaning. forms another pillar in effectively understanding the legislative drafting intricacies resplendent in the application of laws particularly when judicial pronouncements are to be made. This research further digs deeper into the implications wrong sentence use, obsolete grammatical construction and wrong placing of punctuations particularly where they can occasion a complete nullity of the jurisdiction of an entire court and so rendering the purpose of the legislation a futility.

²² M A Etudaiye, 'An Assessment of the Golden Canon of Construction: The Supreme Court of Nigeria as a Case Study' *Abuja Journal of Public and International Law* [2010] 1 (1) 323-337

²³ (1836) 2 M. & W. 191, 195

In 'A Critique of Current Drafting Style of Explanatory Memorandum, Long Title and Interpretation Clause in Nigeria' Usman Ibrahim, Shamsu Yahaya and Edoba B. Omoregie²⁴ meticulously evaluated the existing Legislative drafting style in Nigeria particularly with the use of bold/capital/ uppercase letters for the long title in a Bill and in an Act. The use of bold letters or capital letters for long title as a legislative drafting style in Nigeria has been criticized as having no logical justification in legislative drafting as they are not in line with the rule of boldness and capitalization. This dissertation alludes to the position held by the scholars and adopts same in the proposed amendment so that the FCTCC is made to move from the obsolete style that has no logical justification.

Usman Ibrahim and Zainab Akinde²⁵ keenly elaborated on the legal framework on interpretation of statutes in Nigeria, the concept of purposive approach, how defect in drafting complicate rules of interpretation and the miscarriage of justice that often gets occasioned by the general lack of dexterity in the drafting of legislative texts. This research further pursues a lasting solution inherent in an outright amendment of sections or clauses that consistently occasion absurdity and ambiguity rather than putting the courts at crossroads always when plain and ordinary meanings remain inconsistent with the ultimate purpose of a legislation.

Judicial Ethics and Code of Conduct²⁶ sets out prime reminders on the role of the judiciary in the furtherance of social order particularly how that the rule of law, peace and stability of the country has a lot to do with the perception of justice that citizens have. While the importance of judges understanding the need to interpret statutes in accordance with the justice of every case especially

²⁴ U Ibrahim, S Yahaya and E B Omoregie, 'A Critique of Current Drafting Style of Explanatory Memorandum, Long Title and Interpretation Clause in Nigeria' *NILDS-JLR* (2021) 4 67-74

²⁵ U Ibrahim and Z Akinde, 'Purposive Approach to Statutory Interpretation: Comparative Analysis and Impact on Nigerian Legislative Drafting' *Nnamdi Azikiwe University Journal of Commercial and Property Law (NAU.JCPL)* (2024) 11 (1)

²⁶ Maryam A. Sabo, 'Judicial Ethics and Code of Conduct' (A conference proceedings of the Hybrid Refresher Course for Judges of the Lower Courts, held at Aloysius Katsina-Alu Studies Seminar Hall, Mohammed Bello Centre, National Judicial Institute, Abuja from 4th to 8th March 2024) 10-30

where discretion is to be exercised judicially and judiciously, this research further explains how appropriate it is for judges to be better acquainted with developing legislative drafting principles so as to avoid situations where “our hands are tied” would no longer be an impediment to appropriate functionality of courts. A deeper approach to more effective statutory interpretation, judicial activism and conscious pronouncements that loudly call for amendment of legislations where necessary will be keenly looked at in this research.

Safiyah U. Mohammed²⁷ approached the question of identifying the true legislative intent of the FCTCC Act 2007 from the ‘procedural law’ and ‘substantive law’ jurisdiction perspective, with a call, in the critique of the Appellate court’s findings, for interpretation on the pedestal of ‘ut res magis valeat quam pereat’ – the Latin maxim for “that the matter may have effect rather than fail” which is a subscription to the opinion that a matter of substantive law jurisdiction is not one open to a litigant to choose whether to submit or not. This dissertation goes further to reveal the legislative drafting pitfalls which the 2007 legislation stumbles into, with proposed amendments to aid better communication of the legislative intent so as to cure the irregularities and ambiguities.

‘Syntactic Discontinuity and Cognitive Structuring in the Language of Selected Legislature Texts in Nigeria’²⁸ appreciates how that grammatical structure is systematically related to meanings, uses and situations so that the language of a legislative text needs to have specificity,

²⁷ S U Mohammed, ‘Refusal to Submit to the Jurisdiction of the Federal Capital Territory Customary Court: A Critique of the Court of Appeal Decision in *Oputa v Umunnakwe* (2018) LPELR 46762 (CA)’ *Appellate Review Journal* (2020) (1) 59-74

<https://www.researchgate.net/publication/361711301_REFUSAL_TO_SUBMIT_TO_THE_JURISDICTION_OF_THE_FEDERAL_CAPITAL_TERRITORY_CUSTOMARY_COURT_A_CRITIQUE_OF_THE_COURT_OF_APPEAL_DECISION_IN_CHRISTOPHER_IFEANYI_OPUTA_V_IFEANYI_GEORGINA_UMUNNAKWE_2018_LPELR_4/citations> accessed 29 May 2024

²⁸ C C Onyema and K U Chukwu, ‘Syntactic Discontinuity and Cognitive Structuring in the Language of Selected Legislature Texts in Nigeria’ *Ofuruma: Journal of the Humanities* (2016) (1) (2) 49-64

<https://www.researchgate.net/publication/341446459_SYNTACTIC_DISCONTINUITY_AND_COGNITIVE_STRUCTURING_IN_THE_LANGUAGE_OF_SELECTED_LEGISLATURE_TEXTS_IN_NIGERIA> accessed 30 May 2024

clarity and precision. This is in tune with global trends that celebrate consciousness in the use of language and expression. ‘The Parliamentary Counsel Office of New Zealand²⁹, also reiterates the need to use punctuations appropriately and consistently in drafting legislation especially with the need to ensure that sentences are short, simple and precise. Globally, plain language in legislative drafting speaks to clear communication so that there is no impediment to clarity. In this research emphasis is pointed at “full-stop” and “comma” to the extent that it is clearly responsible for the tone, perspective and understanding of relevant sections. Albeit, without an amendment, proper placing and use of punctuations could salvage the provisions of that Act which is the crux of this research.

In Scope and precedent: judicial rule-making under uncertainty³⁰ the need to take seriously the role of legal rules and doctrine stays highlighted in practical measures towards having precision and accurateness in legislation and application of laws. This research agrees with known principles of legislative drafting and how they are applied to the Federal Capital Territory Customary Court Act 2007 by way of reiterating the function of courts and the decision about how best to communicate legal rules through related opinions, doctrine and public policy to make room for precision and consistency which sits on a pedestal of prominence when legislative texts are tested or applied in court. Indeed, the inability for courts to appropriately apply statutory provisions that are vague, ambiguous or contrary to the intention of the drafters of the law would ultimately call for legal arguments to convince the court to decide in a particular way and ultimately the proposal of an amendment to correct perceived loopholes.

²⁹ Parliamentary Counsel Office, PCO Plain Language Standard ‘Use Punctuation appropriately and consistently’ <<https://www.pco.govt.nz/6.8>> accessed 29 May 2024

³⁰ T S Clerk, ‘Scope and precedent: judicial rule-making under uncertainty’ *Journal of Theoretical Politics* (2016) (28)(3)

Jake Dabang Dan-Azumi,³¹ emphasized the historical development and legislative trends of the National Assembly in Nigeria reveal that the emphasis on socio-political re-engineering is crucial for progress. The literature indicates that a primary responsibility of any legislative body is the creation of laws, and the scholar argued that evaluating legislative accomplishments serves as a logical and effective means of assessing the policy impact of the legislature. Indeed, certain laws enacted by the National Assembly have sparked controversies and, in some cases, faced legal challenges. Consequently, the process of lawmaking, aimed at facilitating socio-political re-engineering, must continually be refined through contributions from the public, key stakeholders, and the judiciary. This research identifies the Act establishing the FCTCC as another key legislation for unity and integration considering the multi-ethnic nature of the diversity with which Nigeria is recognized and in particular the metropolitan design of the Federal Capital Territory where residents comprise of people who are of different ethnic extractions.

A Comparative Analysis of the Common Law and Civil Law Legislative Drafting Styles,³² is an article that reflects on how that in the commonwealth countries, many drafters were historically taught the English style of legislative drafting which continues to dominate drafting styles in these countries. The most common feature of common law is that it is created using legislation with detailed prescriptions with the aim of achieving precision and accuracy so that when judges interpret statutes, they apply them to the precise situations they categorically address which could often lead to narrow and textual interpretation of legislation. This dissertation further recognizes that while the common law and colonial history of Nigeria remains apparent in legislative language and style, the need to pay attention to indigenous peculiarities cannot be jettisoned particularly

³¹ J D Dan-Azumi, 'Key Legislations in Nigeria, 1999-2015: Potentials for Impact and Challenges' *Nigerian Journal of Legislative Affairs* [2017] (7) 2

³² S A Danwanka and U Ibrahim, 'A Comparative Analysis of the Common Law and Civil Law Legislative Drafting Styles' *Nigerian Journal of Legislative Affairs* (2023) 10 (1) 106 – 109

regarding a legislation that establishes and regulates the conduct of cases involving native laws, customs and tradition.

Serah Hope-Tebira,³³ pointed out the notable reality of how the language utilized in traditional legislative drafting has faced criticism for its excessive verbosity, complexity, and reliance on legal jargon. This conventional approach to legislation has been deemed inadequate due to its intricate nature, which is filled with specialized terminology and legal constructs. As highlighted in the article, the complexity inherent in both the language and style of traditional legislative drafting has hindered the understanding and interpretation of legal texts. A significant shift has occurred away from this outdated and obscure style, which has been recognized as a barrier to the clarity of legislative documents. The convoluted and verbose characteristics of traditional legislation have prompted a demand for reform towards more accessible and user-friendly legislative texts. This demand has given rise to the plain language movement, which has rapidly gained traction across various jurisdictions, leading to what is now known as plain language legislative drafting. Acknowledging this shift underscores the modern objective of enhancing the effectiveness of legislation, as it aims to create texts that are tailored to the audience and facilitate the seamless communication of regulatory messages.

This dissertation is a keen identification how adopting legislative drafting in plain language involves the use of specific language and stylistic choices, as well as thoughtful design and structure, to effectively communicate the regulatory message within the legislative document. establishing and regulating the FCTCC. A more thorough examination reveals that the effectiveness of the purposive approach to statutory interpretation is significantly enhanced by the use of plain language in legislative drafting. This method eliminates the complexities, obscurities,

³³ S Hope-Tebira 'Plain Language Legislative Drafting in Nigeria: A Comparative Study of Two Companies and Allied Matters Acts' *NILDS-JLR* [2022-2023] (5&6) 188-192

verbosity, and lack of clarity often found in legislation, thereby making it more accessible and beneficial for the intended legislative audience.

The literature reviewed are principally instructive with pointers to existing and improved legislative drafting professional dimensions. This study identifies critical information and knowledge necessary for the legislative drafting analysis of the Federal Capital Territory Customary Court Act 2007 so preserve the communication of the legislative intent with modern legislative drafting principles.

2.2 Background to Legislative Drafting

Henry Thring was designated as the First Parliamentary Counsel upon the establishment of that office in 1869, a role he maintained until 1901. He gained recognition for his contributions as a parliamentary draftsman and for his innovative approach to the formulation of legislation.³⁴

Henry Thring and the Parliamentary Counsel's Office in London, established in 1869, intentionally sought to prevent disorder that could arise from outsourcing the drafting of parliamentary bills to chancery barristers. This disorder was, in part, a consequence of the involvement of amateur drafters, who lacked the necessary skills for effective legislative drafting prior to the creation of the Parliamentary Counsel's Office.³⁵

The 20th century marked the rise of experts in legislative drafting, who received specialized training aimed at eliminating ambiguity and enhancing precision, accuracy, and clarity in legal texts.³⁶ The British drafting styles and methodologies, as a remnant of colonial influence, continue to shine in the structural, linguistic, and formal aspects of legislation. Even following Nigeria's independence in 1960, the English Parliament maintained significant influence over

³⁴ E George, 'The Rise of the Parliamentary Counsel' *Parliaments, Estates & Representation* 16.1 (1996): 193.

³⁵ Ronke Suzan Omole (Mrs.) *An Appraisal of Legislative Drafting Rules: A focus on the Electoral Act, 2022* (LLM Dissertation NILDS/UNIBEN)

³⁶ S Bilika H, 'Improving legislative drafting capacity' *Commonwealth Law Bulletin* 28.2 (2002): 1142.

legislative drafting practices in the country, with early indigenous drafters often learning from their British counterparts.³⁷

According to Xanthaki, legislative drafting is the process of constructing the text of legislation.³⁸

Crabbe describes it as the art of translating legislative policy into formally written legal rules or enforceable laws.³⁹ However, legislative drafting goes beyond merely converting legislative proposals into legal form. If that were its sole purpose, it would scarcely require the expertise of a lawyer, let alone one skilled in drafting. Dickerson⁴⁰ defines it as “the crystallization and expression in definitive form of a legal right, privilege, function, duty, status, or disposition.” This definition captures two key aspects of drafting: the conceptual aspect, where the drafter identifies and refines the concepts to be used, and the literary aspect, where the drafter chooses the most effective way to express those concepts. This has a more strategic importance when the role of legislative drafters remain keenly appreciated as was stated in 2014 by the Clerk of the National Assembly of Nigeria; “Lawyers who draft legislation engage in a highly technical aspect of law that requires competence. A failure to properly translate substantive policy into the appropriate law adversely affects the policy, the lawyers are like midwives in the birth of laws and so it behooves them to strive hard to help bring forth laws that are effective, clear, precise, intelligible and capable of only one interpretation, which is the true purpose and intent of the policy as envisaged by the policy initiators”.⁴¹

³⁷ O O Martins, ‘The Residual Influence of Colonial Planning Ordinances on the Divided City Conundrum in Nigeria’ *Journal of Inclusive Cities and Built Environment* 2.4 (2022): 25

³⁸ H. Xanthaki, ‘Legislative drafting: a new sub-discipline of law is born.’ (2013) *ISLRev*, 1, 57.
< https://www.researchgate.net/publication/314806485_Legislative_drafting_a_new_sub-discipline_of_law_is_born > accessed 13 September, 2024

³⁹ V C R A Crabbe, ‘Teaching legislative drafting: the Commonwealth Experience.’ *Statute* (1998) *L. Rev.*, 19, 113.

⁴⁰ C R N Dickerson, Legislative Drafting. *Journal of Legal Education*, (1955) 8, 122.

⁴¹ Clerk, National Assembly of Nigeria. The Nation Newspaper of September 2, 2014

2.1.1 Stages of Legislative Drafting

Garth Thonrnton⁴², first popularized the 5 stages as a systematic approach to legislative drafting, Helen Xanthaki's allusion⁴³, identified the unique role of Legislative drafting and its place in the study of law while Edoba Omoregie⁴⁴ further elucidated on them with particular reference to the detailed applicability in Nigeria. The legislative process and the stages involved from the initiation and sponsorship of bills to the final assent by the President or Governor will be considered separately, whereas the drafting process commences with the receipt of information from sponsors who provide the instructions for a bill that will be presented to the Legislature.⁴⁵ Therefore, a comprehensive understanding of these two distinct processes and their respective stages is essential to grasp the associated challenges and limitations fully. The 5 stages are;

- I. Understanding the instruction: This phase commences when the legislative drafter obtains the necessary instructions. These instructions may come from a senior official in the executive branch, who directs a legislative drafter in the Ministry of Justice, or from a legislator addressing a legislative drafter within the legislative bureaucracy or drafting institution, contingent upon the specific context.⁴⁶ The sponsor of the legislative proposal may also choose to communicate the instructions to an independent consulting legislative drafter. Regardless of the origin of the instructions, it is imperative that the recipient among these professionals exhibits exceptional professional competence in understanding the

⁴² G C Thornton, *Legislative Drafting* (1996) 129 ; K. Patchett, Setting and Maintaining Law Drafting Standards, A Background Paper on Legislative Drafting, in C Stefanou & H Xanthaki (Eds.), *Manual In Legislative Drafting*, (2005) 49

⁴³ H Xanthaki 'Legislative Drafting: A new Sub-discipline of Law is born' *IALS Student Law Review* 1 (1) [2013] 57-59 < https://www.researchgate.net/publication/314806485_Legislative_drafting_a_new_sub_discipline_of_law_is_born> accessed 20 September, 2024

⁴⁴ E B Omoregie, From Policy to Law: The Role of the Legislative Drafter, *Legislative Issue Brief*, (2023) Issue 1 < <http://www.nils.gov.ng/>> accessed 10 September 2024

⁴⁵ A R Bakare, 'Legislature and the Challenges of Lawmaking in Nigeria.' *Anonymous Power: Parties, Interest Groups and Politics of Decision Making in Nigeria's Fourth Republic (Essays in Honour of Elochukwu Amucheazi)*. Singapore: Springer Nature Singapore, [2022]. 101-132.

⁴⁶ (n. 32)

proposal. In the event of any uncertainties, these should be swiftly resolved with the sponsor. The process of clarification should continue throughout the different phases of drafting as needed, rather than being limited to the initial stage of receiving the instructions.⁴⁷

- II. Analysis: At this stage, the legislative drafter engages in comprehensive research regarding the subject of the proposal.⁴⁸ For example, if the sponsor is a member of the National Assembly of Nigeria or part of the federal executive branch, the drafter must ascertain whether the proposal falls within the legislative authority of the federal government or the broader constitutional powers granted to the National Assembly to enact laws beyond those specified in the enumerated powers. In this context, the drafter must examine the Exclusive and Concurrent Legislative Lists outlined in the relevant schedules of the Constitution, where the powers of the federal government are explicitly defined.⁴⁹ Additionally, the drafter should investigate the Constitution itself to determine if such authority has been granted to the federal government, particularly if the lists do not explicitly mention the power in question. For instance, Chapter IV of the Constitution of Nigeria implicitly grants concurrent powers to both the federal and state governments to legislate on matters that elaborate on or limit any of the fundamental rights enshrined therein, even though these powers are not explicitly included in the exclusive and concurrent lists. If it is determined that the federal government possesses the authority to legislate on the subject, the drafter must further explore various other issues, such as the existence of any current legislation on the topic or related legislation, whether an amendment to existing legislation is sufficient rather than the introduction of new legislation, any treaty obligations Nigeria may have that

⁴⁷ (n. 33)

⁴⁸ (n.34)

⁴⁹ (n.40)

could prevent the proposed legislation, and whether the superior courts, particularly the Supreme Court, have issued a definitive ruling on the proposal's subject matter. The analysis should also consider the cost-benefit implications of the proposal, among other factors, to effectively fulfill the directive.⁵⁰

- III. Design: At this stage, the legislative drafter initiates the formulation of the draft Bill's framework. It is essential to adhere closely to the specific directives provided by the sponsor. Additionally, consideration must be given to the constitutional limitations on the authority granted to the federal government regarding the subject matter. Lord Thring,⁵¹ a leading authority on legislative drafting, asserts that a legislative draft should first articulate the law, followed by the authority responsible for its administration, and finally outline the procedures for administering the law.⁵² In practical application, the structure of a draft Bill or legislative proposal typically includes the following components: long title, preamble, enacting clause, short title, commencement, duration/expiry, application, purpose clause, definitions/interpretations, substantive administrative provisions, miscellaneous provisions, and final provisions. This framework is not rigid and may be adjusted based on the specific context of the legislative proposal.
- IV. Composition and Development of the Draft: At this stage, the drafter must diligently ensure that the provided instructions are consistently adhered to during the sentence composition process. Such compositions should be clear, precise, unambiguous, and utilize gender-neutral terminology. The intentional use of plain language is essential in this context.⁵³
- Furthermore, based on the policy to be translated to law, the legislative drafter is required

⁵⁰ (n.34)

⁵¹ Ian McLeod, *Principles of Legislative and Regulatory Drafting* (Hart Publishing Limited, 2009); R Esegbabon, *The Nigerian Legislative Process* (Law-Link Consults, 2005) 21

⁵² (n. 32)

⁵³ G Bryan, *Legal writing in plain English: A text with exercises*. (University of Chicago Press), (2023) 62.

to incorporate suitable legislative language that is straightforward, clear, and regulatory, among other factors. It is essential to eliminate superfluous words. Consistency in meaning must be maintained for all terms used throughout the draft. The present tense should be consistently applied. The draft should not be overly condensed; rather, it is advisable to favor short sentences and paragraphs to delineate distinct components, among other considerations.

- V. Scrutiny: This represents the concluding phase of legislative drafting. The parliamentary writer is tasked with confirming the document's structure to guarantee quality assurance. This procedure must cover all elements pertinent to the proposal, which includes following the provided instructions, taking into account constitutional and current legislation, ensuring clarity and simplicity in language, organizing the structure of the draft effectively, and adhering to punctuation standards, along with various other issues related to accuracy. It is advisable that the review be performed by a legislative drafter other than the one who authored the original draft. Once the review is finalized and any detected errors are corrected, the legislative drafter who received the instructions and developed the draft should experience a sense of fulfillment with the final document prior to its submission to the sponsor.⁵⁴

Scrutiny is a continuous process throughout the drafting phase, primarily focused on enhancing clarity and assessing its feasibility. It is essential to conduct legal verification, ensuring compliance with relevant laws and constitutional standards. Additionally, it is necessary to perform verification of principles, structure, language, and purpose.

⁵⁴ (n. 34)

2.3 Bills

A bill is a formal proposal put forward for debate and approval, which seeks to enact, amend, or repeal an existing law.⁵⁵ It represents the first step in the legislative process before a law is passed.

According to Danwanka,⁵⁶ A Bill is characterized as a proposed draft of legislation that is currently subject to legislative processes within the legislature. It serves as the primary legislative instrument employed by a legislature to enact laws, and its sponsorship is a significant metric for assessing and evaluating legislative performance in many parliaments of emerging democracies globally.

Under Section 4 (1) of the Constitution⁵⁷, the National Assembly holds the legislative authority of the Federal Republic of Nigeria. This authority encompasses the ability to enact laws aimed at ensuring peace, order, and effective governance within the Federation, pertaining to matters specified in both the Exclusive Legislative List⁵⁸ and the Concurrent List.⁵⁹ The exercise of this legislative power is primarily conducted through Bills that are passed by the National Assembly and subsequently assented to by the President. Bills are categorized into two types: Private Bills, which pertain to individual citizens, corporate entities, or specific groups, and Public Bills, which impact the broader public. Members of either chamber of the National Assembly or the Executive branch may introduce a Bill in either chamber.⁶⁰

⁵⁵ (n. 14)

⁵⁶ S A Danwanka, 'Legislation, Institution-Building and the Control of Small Arms and Light Weapons in Africa.' *The Palgrave Handbook of Small Arms and Conflicts in Africa* (2021): 453-472.

⁵⁷ The Constitution of the Federal Republic of Nigeria 1999 (as altered)

⁵⁸ Section 4 (2) (3) of the Constitution refer to the Exclusive Legislative List contained in Part I of the Second Schedule.

⁵⁹ (n. 32) Section 4(4)(a)

⁶⁰ Streamsowers and Kohn, 'A Summary Of The Legislative Process In Nigeria: A Guide To Lawmaking In The National Assembly' < <https://www.mondaq.com/nigeria/constitutional-administrative-law/1222558/a-summary-of-the-legislative-process-in-nigeria-a-guide-to-lawmaking-in-the-national-assembly>> accessed 17 September, 2024

It is important to highlight that the Bill, which has evolved from a policy into formal legislation, was not created by the legislators themselves but rather by legal professionals operating in the background. These legislative drafters are trained lawyers who specialize in formulating legislative proposals, Bills, and various other legislative documents, including motions and debate briefs, utilized within the framework of legislative governance. Specifically concerning Bills, the legislative drafter engages in a systematic process that encompasses five distinct stages: comprehending the instructions, analyzing the instructions, designing a draft, composing the draft, and reviewing the final product.⁶¹

2.3.1 Particulars of a Bill

A typical bill in Nigeria is structured as follows:⁶²

1. Title: A descriptive heading that indicates the purpose or scope of the bill.
2. Long Title/Preamble: Explains the objectives of the bill and what it seeks to achieve.
3. Enacting Clause: The clause that signifies the bill is made law. It usually reads: "Be it enacted by the National Assembly of the Federal Republic of Nigeria..."
4. Sections/Clauses: The body of the bill is divided into sections, each dealing with a specific provision or issue.
5. Commencement Clause: Specifies when the bill, if passed into law, will come into effect.
6. Interpretation Clause: Provides definitions and explanations of key terms used in the bill to avoid ambiguity.
7. Citation: A clause that states how the bill (once passed) will be referenced.

⁶¹ (n. 3)

⁶² (n. 27)

2.3.2 Legislative Drafting Stages: Bill Process⁶³

- i. Introduction: Bills are usually introduced in either the Senate or the House of Representatives. Money bills, however, must start in the House of Representatives.
- ii. First Reading: This is the formal introduction of the bill in the chamber. No debate occurs at this stage; the bill is just read out.
- iii. Second Reading: The general principles of the bill are debated. Members can discuss the merits or flaws of the proposal, and a vote is taken at the end. If approved, the bill proceeds to the next stage.⁶⁴
- iv. Committee Stage: The bill is referred to a relevant committee for a detailed examination. The committee reviews it clause by clause, takes evidence from stakeholders, and may suggest amendments.
- v. Report Stage: The committee reports its findings back to the full chamber, and members can debate the suggested changes.
- vi. Third Reading: The final version of the bill is debated, and if passed, it moves to the other chamber (Senate or House of Representatives) to go through a similar process.
- vii. Passage: If both chambers pass the bill, it is sent to the President for assent.
- viii. Presidential Assent: Here the Clerk of the National Assembly sends a copy of the “Clean Bill” to the President for his assent or signature.⁶⁵ The bill becomes law once the President

⁶³ E B Omoregie, From Policy to Law: The Role of the Legislative Drafter, Legislative Issue Brief, (2023) Issue 1 < <http://www.nils.gov.ng/>> accessed 10 September 2024

⁶⁴ T C Jaja, ‘Strategies for Improvement of the Quality of Bills and Legislative Drafting in Nigeria.’ *IJLDLR* 8 (2019): 49.

⁶⁵ <<https://placbillstrack.org/billprocess.php>> accessed 10 October, 2024

signs it. If the President withholds assent, the National Assembly can override the veto with a two-thirds majority vote in both chambers.

2.4 Particulars of an Act

While a Bill is a proposal, an Act is the law passed which has the force of law. By the Constitution⁶⁶ of Nigeria, an Act is a bill that is passed by both Chambers of the National Assembly and assented to by the President. An act can create a new law or change an existing law.⁶⁷ An Act is a bill that has passed through all legislative stages, including the approval of both legislative chambers (Senate and House of Representatives in Nigeria) and has received the president's assent. Once a bill becomes an Act, it becomes enforceable as law.

Assent is peculiar to the particulars of an Act as opposed to a Bill. Once a bill has passed through both chambers of the National Assembly, it is sent to the president for assent. If the president signs it, the bill becomes law and is referred to as an act. After presidential assent, the act is published in the official gazette, after which it comes into force either immediately or on a specific date as stipulated in the act. Once a bill is enacted into law (i.e., becomes an act), it holds the force of law and becomes binding on all persons and entities within the country. It can be enforced by courts and regulatory agencies. After a bill has been enacted into law (becomes an act), any changes to it require an amendment bill. This amendment bill must go through the same process as any other bill to modify or repeal any part of the existing law.⁶⁸ The conventional structure of a Bill remains fundamentally the same with an Act but with some clear differences;

⁶⁶ (n. 48) Section 4(1-9)

⁶⁷ <<https://www.nilds.gov.ng/wp-content/uploads/2023/09/law-making.pdf>> accessed 15 August, 2024

⁶⁸ (n.36)

A. Introductory Apparatus⁶⁹

- I. The Explanatory Memorandum which is a statement of the general aims of the Bill for the information of the legislature is typically not printed with the Act.
- II. There is a detailed table of content for all users of the Act, made up from the section notes and any headings to parts.
- III. The Long Title which is a detailed statement of the scope and the main ways in which the Act is intended to have effect.
- IV. Commencement Date: The date when the Act comes into operation
- V. Enacting words: The formula that shows that the Bill has completed the enactment process.

B. Preliminary Provisions

- I. Short Title (Citation): The name or label by which the Act will be known and cited
- II. Commencement: Particular provisions stating when the Act will come into operation, if not on the date of its Assent or other date required by general legislation.
- III. Interpretation: Provisions stating how terms and expressions in the Act are to be construed
- IV. Object Clause: A statement of the policy objectives of the Act
- V. Application provisions: An extension or restriction of the standard rules governing the application of the Act (e.g. to apply to part of the jurisdiction only or to have extra-territorial effect)
- VI. Duration provisions: Imposing some limitation upon the life of the Act.
- VII. Road map clause: Directions to users on how to find their way around the Act

C. Principal Provisions

⁶⁹ T C Jaja and J O Adesina, *Introduction to Legislative Drafting and Drafting Process in Nigeria* (Malthouse Law Books 2019) 123-126

The subject matter and the crux is found here with the two broad areas;

1. Substantive provisions: The main body of rules relating to the subject matter of the Bill.
2. Administrative provisions: Operational rules in support of the substantive provisions.

D. General/Miscellaneous

1. Penal Provisions: Offences and penalties in support of the principal provisions
2. Evidence & Process: Rules relating to proceedings arising out of the principal provisions
3. Delegation of legislative powers: powers to make secondary legislation to supplement the principal provisions.

E. Final Provisions

1. Amendments and repeals: Alterations to existing law consequent upon the principal provisions.
2. Savings & Transitional: Temporary provisions made necessary by the provisions alterations to existing law made by the Act
3. Schedules: Annexed provisions that supplement the principal provisions

2.5 Customary Law

The Nigerian Institute of Advanced Legal Studies⁷⁰ identifies customary law and tradition to include the way of life of people that subscribe to known and accepted dictates that are ancestral in nature. Native law and custom, tradition, culture and other realities that are customary to individuals, groups or communities endure from generation to generation. As the saying goes, “different strokes for different folks”. What suits and determines the way of life of people who

⁷⁰ (NIALS), ‘Restatement of Customary Law Of Nigeria’ *NIALS JOURNAL* (2013) 13 cited In ‘Essays In Honour Of Hon. Justice Mary Ukaego Peter-Odili’ Fida- View Point Media & Communications Limited [2022] 130

subscribe to the particular customary law is identifiable in the language, tribe and native belief systems which basically shapes the identity of the people.⁷¹

The interpretation of customary law has been established through the jurisprudence of the courts, particularly in the notable case of *Oyewumi v Ogunesan*⁷² as “The organic or living law of the indigenous people of Nigeria which regulates their lives and transactions...” Customary law generally relates to the custom or usage of a given community and these are identified from the tradition, custom, usage and practice of people in a given community which by common adoption and acquiescence on their part and by long and involving habit, it has acquired to some extent, element of compulsion and force of law.⁷³

The indigenous legal framework is composed of numerous customs, each tailored to specific ethnic groups. The jurisdiction of customary law is confined to distinct cultural boundaries and is held by a limited ethnic community.⁷⁴ Typically, customary law is transmitted orally and remains undocumented, evolving within the community and being handed down through generations.

The evolution of customary laws is deeply embedded in the Nigerian Legal System, establishing that customary law is fundamentally a matter of fact that necessitates proof through evidence. This indicates that evidence is essential for the validation and establishment of various rules of

⁷¹ S. Obatusin, ‘Customary Law Principles As A Tool For Human Rights Advocacy: Innovating Nigerian Customary Practices Using Lessons From Uganda And South Africa Courts’ *Columbia Journal Of Transnational Law* (2018) 3

⁷² (1990)3 NWLR, (Pt137)182, 207

⁷³ This was the decision of The Supreme Court in The Case Of *Nwaigwe v Okere* (2008) All FWLR (Pt 43) 870

⁷⁴ Hon. Justice Jibiri Idrisu (Retd.) ‘The Repugnancy Doctrine Under Customary Law: Issues and Challenges’ Being Paper Presented at The National Judicial Institute Abuja 15th April 2021

custom and tradition. It is only when a native law or custom gains notoriety through consistent presentation in courts that it is recognized judicially.⁷⁵

Customary Law refers to the traditional legal systems and practices that have developed among Nigeria's numerous ethnic groups over time. It is unwritten, fluid, and based on long-established customs recognized and adhered to by communities. These laws typically govern matters such as marriage, inheritance, land ownership, succession, and dispute resolution within a community. Nigeria has hundreds of ethnic groups, each with its own distinct customs.⁷⁶

This diversity means that customary laws vary significantly across the country. Customary law and legislative drafting in Nigeria are important aspects of the country's legal system, both of which reflect its diverse cultural heritage and the complexities of a pluralistic legal framework. Customary law and legislative drafting in Nigeria are intertwined, with customary law deeply influencing various aspects of Nigerian legislation, especially in areas of personal law like marriage, inheritance, and land tenure. Legislative drafters face the challenge of integrating customary practices into a coherent statutory framework while ensuring that laws comply with constitutional principles and international human rights standards. In a pluralistic society like Nigeria, balancing these different systems is a complex but essential task.⁷⁷

⁷⁵ E A Simpa, 'Substantial Justice At Little Cost And Time: The Peculiarities Of The Federal Capital Territory Customary Courts' *The Nigerian lawyer Online Publication* (2020) <<https://Thenigerialawyer.Com/Substantial-Justice-At-Little-Cost-And-Time-The-Peculiarity-Of-The-Federal-Capital-Territory-Customary-Courts/>> accessed 19 September 2024

⁷⁶ A Derek, 'Judicial recognition and adoption of customary law in Nigeria' *The American Journal of Comparative Law* 37.3 (1989) 571.

⁷⁷ A Ademola, 'Jurisprudential Examination of the Challenges in Ascertaining Nigerian Customary Law.' *Novena University Law Journal (NULJ)* 8 (2023) 14.

2.6 Customary Courts

The historical standpoint of customary courts in Nigeria is webbed into the legal system through the interaction of indigenous practices and colonial influences, which shaped the development of customary courts as part of the broader Nigerian judiciary.⁷⁸ Customary courts primarily focus on resolving disputes based on the customs and traditions of local communities, differing from the statutory courts that apply formal laws.

2.6.1 Pre-Colonial Era

Prior to the advent of colonial rule, numerous ethnic groups in Nigeria, such as the Yoruba, Igbo, and Hausa-Fulani, possessed established governance structures that included customary mechanisms for resolving disputes.

These were informal and flexible systems, with authority often vested in traditional rulers, elders, chiefs, or councils. Customary law varied significantly from region to region and was deeply rooted in local traditions, religious beliefs, and cultural practices.

- Yoruba: The Oba (king) and his council of chiefs acted as the main judicial authorities, resolving disputes through a blend of custom, religion, and moral principles.
- Igbo: The Igbo practiced a more decentralized system where family heads, village assemblies, and elders were responsible for resolving disputes.
- Hausa-Fulani: Among the Hausa-Fulani, Islamic law (Sharia) heavily influenced customary law, especially in Northern Nigeria.

⁷⁸ Ifedapo, O Oluwakemisola and O O Samuel. 'A Historical Re-Examination of Customary Arbitration and the Administration of Justice in Nigeria.' *International Journal of Current Innovations in Advanced Research* (2018) 26-39.

2.6.2 Colonial Era (1861–1960)

When British colonial rule began in Nigeria in the 19th century, the colonial administration found it practical to rule indirectly through existing traditional structures. This approach, known as Indirect Rule, allowed the colonial government to work through local chiefs and traditional institutions, which included recognizing customary law and establishing Native Courts (precursors to customary courts).

- **Native Courts Ordinance (1914):** The British introduced native courts to formalize and regulate the administration of customary law under colonial oversight. These courts were subordinate to the colonial judiciary and were staffed by traditional leaders, but they had to operate under the supervision of colonial administrators.
- **Dual Legal System:** The colonial system created a dual legal system where customary law coexisted with English common law. Customary courts dealt with issues like land disputes, marriage, inheritance, and family matters, applying customary norms, while statutory courts handled criminal matters, commercial law, and other issues governed by English law.

2.6.3 post-Independence (1960–present)

After Nigeria gained independence in 1960, customary courts continued to operate as part of the judiciary, but there were efforts to harmonize the legal system and reduce the fragmentation of laws. Despite modernization and the growth of statutory courts, customary courts have remained important in rural areas where traditional customs are still strong.

Key developments:

- **Integration and Reforms:** Successive Nigerian governments have tried to reform customary courts to improve their efficiency and align them with fundamental human rights, especially regarding gender equity and fairness.
- **Constitutional /Statutory Recognition:** Customary courts are recognized by the Nigerian Constitution and individual legislations establishing them while their jurisdiction covers personal and civil matters, such as marriage, land disputes, and inheritance, provided both parties consent to their authority.⁷⁹
- **Challenges:** Customary courts face challenges, including inconsistency in the application of customary law, variations between ethnic groups, and a lack of formal training for judges (often traditional leaders or community members). However, these courts remain vital in addressing local disputes.

2.6.4 Contemporary Role of the Federal Capital Territory Customary Court

The concept of unity in diversity represents the most sought-after ideal in Nigeria. Comprising 36 states and the Federal Capital Territory, this remarkable nation boasts a vibrant population characterized by distinct languages, customs, cultures, traditions, and belief systems. Conflicts are an inherent aspect of human life, which underscores the ongoing necessity for legal recourse, justice, and the enforcement of laws.⁸⁰

In the Federal Capital Territory, Abuja, there is a notable surge in urbanization, which is reflected in the diverse population that communicates in various native languages and embraces a multitude of cultural and traditional practices.⁸¹ The area is home to numerous ethnic groups,

⁷⁹ (n. 48) Section 282 (1) & (2)

⁸⁰ (n. 22)

⁸¹ Ogunsola, S. A, 'Social sustainability: guidelines for urban development and practice in Abuja City, Nigeria' Nottingham Trent University (United Kingdom) (2016)

including Gbagyi, Hausa, Ebira, Gwari, Gede, Yoruba, Igbo, Fulani, Igala, Idoma, Tiv, and Ijaw, among others. The legislation that established the customary court is intended to maintain a significant role within the legal framework, particularly in rural and less urbanized regions. This is essential for providing accessible and culturally appropriate avenues for dispute resolution, thereby complementing the alternative dispute resolution methods that have traditionally been available. Consequently, the Customary Courts are designed to avoid excessive technicalities, ensuring that the proceedings are affordable, relatively informal, and conducted as swiftly as possible, all while upholding the principles of justice.⁸²

⁸² Madondo, Isaac. "Accessibility, Independence and Impartiality of the Traditional Court System." *Journal of Law, Society & Development* 10 (2023).

CHAPTER THREE

FRAMEWORK OF THE FEDERAL CAPITAL TERRITORY CUSTOMARY COURT

ACT 2007

The significance of legislative drafting rules is paramount in the development of clear, precise, and effective laws. Nevertheless, the failure to consistently apply these rules within the Federal Capital Territory Customary Court Act presents considerable challenges. This chapter analyzes each of the 67 sections of the Act, identifying each section and a summary of what they contain.

3.1 Objectives of the Act

- I. To establish a Customary Court for the Federal Capital Territory Abuja
- II. To prescribe the mode of its operation
- III. To prescribe the mode of supervision by the Appellate Customary Court of Appeal of the Federal Capital Territory, Abuja.

3.2 Summary of the Act

The Act is divided into XIV parts with 67 Sections

I. PART I- Establishment and Composition

Sections 1,2,3 and 4 pertains to establishment, composition and how proceedings of the court are to be conducted.

Sections 5,6,7 and 8 relates to operational realities of the judges

II. PART II – Officers of Customary Courts

Sections 9,10,11,12 and 13 identify Registrars, Commissioners of Oaths and Bailiffs and their operations

III. PART III – Jurisdiction of Customary Court

Section 14 generally relates to the jurisdiction of the court and points to the schedule while Section 15 mentions the need for the court to promote Alternative Dispute Resolution.

IV. PART IV – Law to be administered

Sections 16 and 17 relates to appropriate laws to be administered.

Section 18 mentions guardianship of children and the paramount consideration principle.

Section 19 guides the court on the rule of evidence applicable.

V. PART V – Practice and Procedure in Customary Court

Sections 20,21,22,23,24,25 and 26 generally relate to conduct of proceedings in the customary court.

Section 27 specifies how judgments should be written and delivered.

Sections 28 and 29 relates to transfer of cases

VI. Part VI – Ancillary Powers of Customary Court

Sections 30,31,32 relates to Imprisonment, fines and compensations

Sections 33 and 34 gives power to the court to Summon witnesses and to give evidence

Section 35 is on Execution of Judgment

Sections 36,37,38,39 and 40 are general provisions on criminal litigation

Section 41 is on Execution of Order emanating from other courts.

VII. Part VII – Supervision and Control of Customary Courts

Sections 42 and 43 creates the Inspectorate division and specifies the functions

Sections 44 and 45 limits the powers of Inspectors and the President of the Customary Court of Appeal with regards to interference with proceedings.

VIII. Part VIII – Transfer of Cases

Sections 46 and 47 relates to the power of the court to transfer cases and the specification that there is no applicable fees for case so transferred.

IX. Part IX – Appeals

Sections 48, 49 and 50 specifies the right of appeal and the power of the appellate court to inspect records of the trial court.

X. Part X – Offences

Sections 51, 52, 53, 54, 55, 56, 57 and 58 relates to specific offences to which the customary court can exercise criminal jurisdiction

Section 59 makes falsification of records a criminal offence

XI. Part XI – Financial provisions

Section 60 relates to collection of revenue

XII. Part XII – Rules of Court

Section 61 empowers the president of the Customary Court of Appeal to make civil procedure rules for the court

XIII. Part XIII – Transitional and Miscellaneous provisions

Sections 62, 63 and 64 relates to transition, savings and repeal of certain sections of the Area Court Act

Section 65 lists provisions of the Evidence Act that are applicable

XIV. Part XIX – Interpretation and Citation

Section 66 is the interpretation section

Section 67 is the short title

3.3 Background

The Nigerian legal system recognizes customary law as intrinsic to the fabrics of law and justice particularly with the core values, personal law and traditional interactions between Nigerians remain largely identifiable in daily living realities even for people who do not live or reside within their local communities.⁸³

The Federal Capital Territory, Abuja has residents who belong to or subscribe to native laws and custom applicable to different tribes, dialects and communities. While there are local chiefs, traditional rulers and native dispute resolution mechanisms available within the traditional practices of the different cultures, the imperative for establishment of customary courts as part and parcel of the judicial arm of government in Nigeria cannot be overemphasized or underestimated.

One factor that promotes unity in Nigeria is the sense of belonging that everyone requires particularly in a metropolitan city which is the seat of power for the Federal Government of Nigeria. The National Assembly is by the constitution mandated to exercise legislative powers for the Federal Capital Territory Abuja.⁸⁴

In drafting legislation, adherence to legislative drafting rules is paramount. Language is social in nature been that it is a social institution. It is a means of nourishing and developing culture and establishing human relations. Like humans, language is not static but dynamic and it also changes, this is why legislative drafting which is a form of language used to communicate the legislative intent, adhering to rules of legislative drafting; promotes legal certainty with clear, consistent and unambiguous laws, it enhances the enforceability of

⁸³ M E Nwocha, Customary Law, Social Development and Administration of Justice in Nigeria (Scientific Research Publishing 2016) 156

⁸⁴ (n.52) Section 299 (a)

laws by providing a solid foundation for their implementation, also facilitates effective communication and societal cohesion.

3.4 Content Analysis

Readability naturally emerges as a consequence of effective legislative drafting, emphasizing the use of short sentences, paragraphs, and avoiding complex language to ensure ease of understanding remains very essential. The lack of precision in the identified sections where ambiguity is identified points to the need for better plain language use. In the process of legislative drafting, it is essential to select appropriate terminology and uphold grammatical integrity, as this minimizes ambiguity in the interpretation of words or phrases, thereby influencing the overall construction.⁸⁵

In the stages of legislative drafting, for the Federal Capital Territory Customary Court Act, 2007, This research identifies that while the drafters received and understood the Instruction which is to establish a court with powers to administer justice regarding all and any customary law applicable to residents of the Federal Capital Territory, Abuja, by the provisions of Section 14 and the Schedule thereto, it is in the composing and scrutinizing of the draft that a lot more attention to details required and for the age of the legislation with the understanding of the constantly evolving legislative drafting best practices, an amendment is indeed needed.⁸⁶ The question of custody of children upon dissolution of marriage is fundamental to the jurisdiction of the Federal Capital Territory Customary Court but the word “custody” is nowhere used in the Act. “guardianship” as used creates a form of ambiguity that leads to litigation for interpretation.⁸⁷

⁸⁵ Sections 2, 25, 14 and 65 of the Federal Capital Territory Customary Court Act 2007

⁸⁶ Ibid. Section 14

⁸⁷ Ibid, Section 18(2)

3.5 Content of the Act

- I.* The long title needs to be amended to reflect correct choice of words and the use of bold/capital or uppercase letters with no logical justification
- II.* The enactment clause is drafted in an archaic style and it no longer represents the drafting style adopted by the National Assembly “BE IT ENACTED”
- III.* From section 2 of the Act, there is the use of the gender-specific word “Chairman” repeatedly in the Act. “Chairperson” or the use of plain “Presiding Judge” especially with regards to the head of the panel of judges which is a better interpretation of the legislative intention.
- IV.* There is the absence of marginal notes for sections 39, 40 and 41
- V.* The first two sections of Part VII i.e. sections 43 and 43 have no marginal notes. Marginal notes as internal aids to statutory interpretation are now more effective in compliance with modern legislative drafting principles.
- VI.* The use of plain language is required to cure the ambiguity in Sections 14 and 18. Stating the category of persons that the Federal Capital Territory Customary Court has jurisdiction over and the position of litigants with regards to procedural law jurisdiction especially with the general principle of law that substantive law jurisdiction cannot be waived.
- VII.* Section 65 contains specific sections of the repealed Evidence Act. The new and applicable sections of the Evidence Act⁸⁸ are identified and specifically listed.

Finding difficulty in comprehending the entire Part IV and V is a consequence of the fact that the drafters employed the use of terms that are not explicit and not particularly straightforward.

⁸⁸ 2011

Using explicit and straightforward language in legislative drafting is crucial because it ensures clarity, precision, and accessibility. Clear language helps avoid multiple interpretations, reducing legal disputes over meaning. Laws that are open to interpretation can lead to inconsistent application or exploitation of loopholes.

Explicit language establishes a standard interpretation that can be applied uniformly. 1. This uniformity guarantees that analogous situations are addressed in a comparable manner, fostering equity and reliability. Straightforward language makes laws easier to understand for everyone, not just legal professionals. It empowers citizens to know their rights and obligations, which promotes compliance and strengthens trust in the legal system. Ambiguity in law often results in costly litigation and lengthy judicial processes. Clear, precise language reduces the need for judicial interpretation, streamlining the application of the law.

The next chapter is a legislative drafting critique of the act with other legislative drafting gaps identified.

CHAPTER FOUR

A LEGISLATIVE DRAFTING CRITIQUE OF THE FEDERAL CAPITAL TERRITORY CUSTOMARY COURT ACT 2007

This chapter delves into the specific sections, the structure and form of the act from a legislative drafting perspective. The gaps identified are accompanied with recommended amendments to cure the legislative defects perceived in order to effectively communicate the legislative intent.

4.1 Long Title and the Enacting Formula

The long title reads “AN ACT FOR AN ACT TO ESTABLISH A CUSTOMARY COURT FOR THE FEDERAL CAPITAL TERRITORY ABUJA AND TO PRESCRIBE THE MODE OF ITS OPERATION AND SUPERVISION”.

The use of bold/capital or uppercase letters for long title as a legislative drafting style in Nigeria has been criticized as having no logical justification in legislative drafting as they are not in line with the rule of boldness and capitalization.⁸⁹ The long title does not constitute a detailed statement of the scope and the main ways in which the Act is intended to have effect.

Legislative drafting rules identify the long title as such that serves as an essential component for understanding the purpose, scope, and intended effect of the legislation. The long title’s significance stems primarily from its ability to clarify the legislation’s purpose and scope. It offers a concise summary of the statute’s objectives and its intended application.⁹⁰ This helps lawmakers, courts, and citizens quickly understand the legislation's focus without delving into the full text. In cases where there may be ambiguities or disputes regarding the interpretation of a specific provision, the long title can be used by the judiciary as a reference to clarify legislative

⁸⁹ (n. 19)

⁹⁰ (n.25)

intent. Courts may look at the long title to understand the law's overall objective, which can aid in resolving interpretation issues. The long title often outlines the boundaries of the law, helping to prevent its application from exceeding its intended scope. This prevents overreach and ensures the law is applied only within its intended limits.

The following draft long title will be more efficient; “A Bill for an Act to Establish the Federal Capital Territory Customary Court, Abuja, to exercise jurisdiction over persons within the territorial limits of the Federal Capital Territory Abuja, and over persons outside the territorial limits of the Federal Capital Territory Abuja, who submit to the jurisdiction of the court, prescribes the mode of its operation and supervision for speedy dispensation of Substantial Justice at little cost and time, promoting cultural values and fundamental rights of residents of the Federal Capital Territory Abuja”

The Enactment clause is redrafted to reflect the National Assembly drafting style; “ENACTED by the National Assembly of the Federal Republic of Nigeria”

The explanatory memorandum offers sufficient clarification on the intentions of the newly introduced legal framework, helping to interpret the act in case of disputes about its actual purpose. It should offer insight and background information on policy development, as well as provide further details on the application of the legislation.⁹¹

This research will in the end further propose an “EXPLANATORY MEMORANDUM” to be included in the amendment Bill so as to detail the theme and purpose of the Act as suggested;

“This Bill seeks to expand the scope and clearly set out the territorial jurisdiction of the Federal Capital Territory Customary Court using plain language, empower the Federal Capital Territory Customary Court to exercise jurisdiction over persons within the territorial limits of the Federal

⁹¹ (n.13)

Capital Territory Abuja, and over persons outside the territorial limits of the Federal Capital Territory Abuja, who submit to the jurisdiction of the court, prescribes the mode of its operation and supervision for speedy dispensation of Substantial Justice at little cost and time, promote cultural values and fundamental rights of residents of the Federal Capital Territory Abuja to adopt gender neutral pronouns, increase the monetary jurisdiction limit for each grade of court and replace the sections of the repealed Evidence Act with sections of the Evidence Act 2011 that are applicable to the Federal Capital Territory Customary Court.”

4.2 Gender-Neutrality

Legislation is designed to convey regulatory messages to its users, serving as a mechanism to enforce and encourage compliance. It strives to articulate the new obligations and rights in a clear, precise, and unambiguous manner. This clarity is essential to inform citizens who are inclined to adhere to the law about the necessary changes in their behavior or actions following the enactment of the legislation. Consequently, it is imperative that the legislative message is received in the most effective manner possible.

The expression of gender in legislative studies remains in the periphery of plain language or, more recently, clarity. Gender-neutral language refers to language that includes all sexes and treats women and men equally.

Section 2 of the Federal Capital Territory Customary Court Act⁹² provides “(1) A Customary Court shall consist of a Chairman and two other members who shall be referred to as customary court members, all of whom shall be appointed by the Judicial Service Committee...”

⁹² 2007

The employment of masculine terminology to refer to individuals irrespective of their gender or sex is both unnecessary and imprecise, often perpetuating longstanding gender stereotypes. In essence, gender-neutral writing promotes clarity, inclusivity, and equality.

The terminology “Chairman” is not gender neutral because it uses masculine terms without including a gender-inclusive alternative. To adhere to gender neutrality, the drafter could use terms like “Chairperson or Chair” to avoid specifying gender. This research is more favorably disposed to the use of “Presiding Judge” in place of “Chairman” and “Judge” in place of “members”. This ensures that the roles are open to individuals of any gender. A suggest way to redraft this to reflect gender neutrality would be- “(1) A Customary Court shall consist of a “Presiding Judge” and two other judges who shall be referred to as customary court judges, all of whom shall be appointed by the Judicial Service Committee...”

In the following sections, the authors consistently employed the pronoun 'he.' This approach to drafting does not align with contemporary international best practices, which advocate for gender-neutral language. Thornton posits that 'gender-neutral legislation should be the standard.' This recommendation has seemingly been embraced by the global community of legislative drafters, as the use of gender-neutral terminology has become the prevailing norm.⁹³ Consequently, terms that denote gender should be excluded from statutes unless the drafter explicitly intends for the provision to pertain to a specific gender.

4.3 Convoluted Expressions, ambiguities and the attendant confusion

Plain language refers to the practice of utilizing clear, simple, and direct language to communicate information effectively. This approach minimizes the use of intricate terminology or complicated phrases. It focuses on employing everyday language that is readily

⁹³ Claribel Diebo LongJohn ‘Gender Neutral Legislative Drafting in Nigeria’ *International Journal of Humanities and Social Sciences* (IJHSS) Apr - May 2015 (4) (3) 84

comprehensible to the intended audience, steering clear of unnecessary complexity or vagueness. The main objective is to improve communication and ensure that the target audience can understand the information with ease.

Effective legislative drafting inherently fosters readability by prioritizing short sentences and paragraphs while steering clear of complex language, thereby facilitating comprehension. The principles of readability, plain language, and clarity are crucial in preventing ambiguities and the resulting confusion.

Section 2 of the Federal Capital Territory Customary Court Act 2007 provides;

“2(1) A Customary Court shall consist of a Chairman and two other members who shall be referred to as customary court members, all of whom shall be appointed by the Judicial Service Committee.

(2) For the purpose of hearing any cause or matter, three members shall constitute a quorum.

(3) A member who did not take part in the entire hearing of a cause or matter shall not participate in the judgment of the court.”

Subsection (3) regarding the quorum of the court and the effect of proceedings conducted where one member is absent or even the chairman is absent raises several questions of interpretation, ambiguity and uncertainty particularly with the need to ensure speedy dispensation of justice. What often occurs in court is that different individual judges have divergent attitude and approach towards professionalism. While some remain consistently punctual and committed, others are known for truancy and laziness which often translates into lack of commitment to being present for court proceedings.⁹⁴ The intention of the legislature was to have valid

⁹⁴ Samaila, E. J., Inconsistency in Quorum: The Implication of the Decision of the Customary Court of Appeal, Kaduna in the case of Aboi v. Aboi (23 June, 2020) on Civil Adjudication in the Customary Courts in Kaduna State. *Aboi (23 June, 2020) on Civil Adjudication in the Customary Courts in Kaduna State**(August 8, 2022).

judgments when only two judges participated in the proceedings. That intention ought to have been specifically and precisely communicated. Parliamentary intention can be clearly identifiable when the drafting of provisions in a legislation are done without ambiguity or conjecture. This is particularly important because of the peculiarities of legislative drafting in general and the drafting of punishments and penal liability within the broader context of law and justice.

To address these concerns, maintain precision and promote effective statutory interpretation, the section and provisions may be rephrased as follows;

“2(1) A Customary Court shall consist of a Presiding Judge and two other judges who shall be referred to as customary court judges, all of whom shall be appointed by the Judicial Service Committee.

(2) For the purpose of hearing any civil cause or matter, three Judges shall constitute a quorum. One Judge shall constitute the court for the purpose of hearing any criminal matter, mobile court or quasi criminal trials.

(3) In civil matters, proceedings with two judges is valid and a Judge who did not take part in the entire hearing of a cause or matter shall not participate in the judgment of the court.”

Also, Section 25 provides;

“25 (1) A customary court may adjourn its sitting from day to day or to any convenient date.

(2) If the members of a customary court are not present at the place appointed for any sitting of the court, or if a quorum is not formed, any member present or an officer of the customary court or any other person authorized in that behalf by the Chairman of the court may adjourn the sitting until such time and to such place as

may be announced to be convenient and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at such time and place.

First, the gender-specific use of ‘Chairman’ no longer suits the purpose of modern legislative drafting. Also, Subsection (2) is particularly convoluted in the sense that the complication and attendant confusion cannot be escaped. When a quorum is formed will the other officers of the court still have powers to act? If members of the customary court are not present at a court sitting designated place, then the legislation ought to plainly state the available options.

This research suggests that, for the avoidance of ambiguity that section ought to be drafted as plainly as practicable so as to reflect the true intention of the legislature. For example, 25(2) “In the absence of a quorum a judge present or any person authorized by the Presiding Judge may adjourn the sitting to a place convenient for all parties”

4.4 Legislative Drafting Gaps affecting the Jurisdiction of the FCT Customary Court

By the provisions of Section 14(1) “A Customary Court shall have and exercise jurisdiction over all persons within the territorial limits of the Federal Capital Territory, Abuja, who submit to the jurisdiction of the Court.” The powers of the court and the specified territorial limits of jurisdiction appear to be clearly spelt out while subsection points to the schedule where further detailed particulars regarding jurisdictional limits are listed “(2) A Customary Court shall have and exercise jurisdiction over causes and matters set out in the Schedule to this Act.”

Section 14 generally relates to the jurisdiction of the court and points to the schedule wherein items are listed for specifics. The substantive jurisdiction vested on the Customary Court of the FCT, under Section 14(2) item 1 of Part 1 of the schedule to the Federal Capital Territory Customary Court Act 2007 is not made to be subject to the provisions of Section 14(1) which

relates to procedural law jurisdiction. Construing Section 14(1) to mean submission to the court's substantive jurisdiction would amount to breach of the opposing litigant's right to fair hearing guaranteed by the Constitution of Nigeria. It is also a constructive way of encouraging forum shopping to litigants. It is also contemptuous for a litigant to refuse to submit to the Substantive law jurisdiction of a court. Where a litigant will not have anywhere else to go and the ingredients of jurisdiction are complete, the adverse party cannot refuse to submit to the jurisdiction of the court.⁹⁵ Contempt of court occurs when a litigant disobeys or disrespects the authority of a court, including its jurisdiction. In the customary courts, refusing to submit to substantive law jurisdiction means denial of the authority to apply customary law to a case within its scope which no litigant can lawfully do. Customary courts have jurisdiction over specific matters defined by law, such as disputes rooted in customary practices (e.g., a traditional marriage or land tenure under local customs). If a case clearly falls within this jurisdiction, the court has the legal authority to hear it.⁹⁶

This provided a temporary relief in the dimension of statutory interpretation on a pedestal that is favorable to the purposive approach as the courts subsequently ruled to preserve the jurisdiction of the court over persons who would ordinarily refuse to submit to the jurisdiction of the court with or without a reason.

However, the Court of Appeal in *Christopher Ifeanyi Oputa v Ifeanyi Georgina Umunnakwe*⁹⁷ was categorical in deciding that Section 14 of the Customary Act 2007 provides that a customary Court has jurisdiction only over persons within the territorial limits of the Federal Capital Territory and in addition, only if they "submit to the jurisdiction of the Court." In line with the

⁹⁵ This was the decision in the *Cidi Aliyu v Mr. Fidelis Anosike* (Unreported) 4/10/2022 FCT CCA Appeal No. FCT/CCA/CVA/7/2021

⁹⁶ O Akintunde, "Jurisdiction in Customary Law Matters in Nigeria: A Critical Examination." *Journal of African Law* 17, no. 2 (1973) 227

⁹⁷ (2018) LPELR-46762(CA)

literal statutory interpretation rule, the court of appeal decided that Section 14 clearly shows that the customary Court would not have jurisdiction over a person who objects to its jurisdiction. Identifying the fact that the adverse party filed a Preliminary Objection effectively refusing to submit to the jurisdiction of the Court, the court of appeal further decided that nothing derogates from the fact that he first and foremost, refused to submit to the jurisdiction of the Court.

This research therefore identifies the legislative drafting flaw in the conveying of the intention of the legislature particularly with regards to the creation of the FCTCC so that with an amendment to reflect “and persons who live outside the Federal Capital Territory but submit to the Jurisdiction of the Court”

Here is a redraft in plain language and clear terms “A Customary Court shall have and exercise jurisdiction over persons within the territorial limits of the Federal Capital Territory, Abuja and shall have and exercise jurisdiction over persons outside the Federal Capital Territory, Abuja who submit to the jurisdiction of the Court.”

Section 65 lists provisions of the Evidence Act that are applicable. It provides specifically that “the Customary Court and Customary Court of Appeal FCT Abuja shall in Judicial Proceedings be bound by the provisions of sections 14, 15, 59, 76, 77, 78, 92, 93, 135, 136, 155, 177 and 227 of the Evidence Act.”

Clearly, the Existing Law of Evidence in Nigeria is the Evidence Act, 2011 (now referred to as ‘the new Evidence Act’), in effect repealed the ‘old Evidence Act’⁹⁸ which was the applicable and operative law of evidence in the year 2007 when the Act of the National Assembly creating this Federal Capital Territory Customary Court came into force and became operational.

⁹⁸ Evidence Act Cap. E.14 Laws of The Federation of Nigeria 2004

For the purpose of meticulous precision, the specifically listed sections of the ‘old Evidence Act’ pursuant to Section 65 of the Federal Capital Territory Customary Court Act 2007 which have all been replicated (with some amendments) in the ‘New Evidence Act’ are exclusively identified and individually distinguish below;

1. Section 14 of the ‘old Evidence Act’ provides for: proving a custom, judicial notice of a custom, evidence of custom and the validity test each custom must pass before they can be applicable. The provisions of that section are now in Sections 16, 17 & 18 of the ‘New Evidence Act’
2. Section 15 of the ‘old Evidence Act’ which speaks of relevant facts as to how matter alleged to be custom is understood, is replicated in Section 19 of the ‘New Evidence Act’.
3. Section 59 of the ‘old Evidence Act’ bothers on opinions as to native law and custom. It is now found in Section 70 of the ‘New Evidence Act’.
4. Section 76 of the ‘old Evidence Act’ provides for proof of fact by oral Evidence. Section 125 of the ‘New Evidence Act’ is the replica.
5. The provision of Section 77 of the ‘old Evidence Act’ lists certain conditions that oral evidence must meet. Those provisions are now resplendent in the provisions of Sections 126 & 127 of the ‘new Evidence Act’.
6. Section 78 of the ‘old Evidence Act’ which allows the court to order proof of facts by affidavit is now reflected in Section 107 of the ‘new Evidence Act’.
7. Section 92 of the ‘old Evidence Act’ speaks of weight to be attached to admissible evidence. This is now provided for in Section 34 of the ‘new Evidence Act’.
8. Section 93 of the ‘old Evidence Act’ provides; “The contents of documents may be proved either by primary or by secondary evidence” This is now *in pari materia* with Section 85 of the ‘New Evidence Act’.

9. Sections 135 & 136 of the 'old Evidence Act' provides for burden of proof and where burden of proof in a suit lies respectively. They are now contained in the provisions of Sections 131 & 132 of the 'New Evidence Act'.
10. Section 155 of the 'old Evidence Act' speaks of competence of persons to testify. This is now covered by Section 175 of the 'new Evidence Act'.
11. The need for corroboration in an action for breach of promise of marriage is the content of Section 177 of the 'old Evidence Act'. That provision is now resplendent in Section 197 of the 'new Evidence Act'.
12. Section 227 of the 'old Evidence Act' covers wrongful admission or exclusion of evidence and its attendant consequence. This is now provided for in Section 251 of the 'new Evidence Act'

Having chronologically identified the sections of the 'New Evidence Act' which are replications and amended versions of the 'Old Evidence Act', this research finds that the Sections of the Evidence Act⁹⁹ applicable to Federal Capital Territory customary court are Sections; 16, 17, 18, 19, 70, 125, 126, 127, 107, 34, 85, 131, 132, 175, 197 and 251.

A consequential amendment of Section 65 of the Federal Capital Territory Customary Court Act¹⁰⁰ to reflect the current position of law now becomes necessary especially going by the rule of interpretation of statute captured by the Latin maxim: *expressio unius personae vel rei est exclusio alterius* which means- The express mention of one person or thing is the exclusion of another.

⁹⁹ 2011

¹⁰⁰ 2007

4.5 Comparative Lessons

The comparative analysis embarked upon in this dissertation delves into an examination of the rules of legislative drafting within the context of the peculiarities identifiable in Customary Court laws of some states in Nigeria.

The incorporation of gender-neutral terminology in the formulation of customary laws in Nigeria signifies a broader initiative to modernize legal systems, enhance inclusivity, and ensure compliance with constitutional and international norms. Customary laws in Nigeria, which are fundamentally based on local traditions, frequently exhibit both implicit and explicit gender biases. Examining the implementation of gender-neutral language offers valuable perspectives on the challenges, advancements, and potential opportunities within this domain.

The use of gender-neutral language helps to prevent the reinforcement of stereotypes and systemic biases within the legal system, thereby promoting inclusivity and fairness in legislation. The Constitution of Nigeria also explicitly prohibits gender-based discrimination, and employing gender-neutral terminology in lawmaking is consistent with these constitutional mandates. As a participant in international treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Nigeria is dedicated to promoting gender equality.

The implementation of gender-neutral language guarantees that all individuals, irrespective of their gender identity, feel acknowledged and safeguarded by the law.

Modern customary law drafts increasingly incorporate gender-neutral terms like “spouse” instead of “husband” or “wife” and “parent” instead of “father” or “mother.”

Other examples of Gender-Neutral Drafting;

1. Marriage Laws: Use terms like “spouses” instead of “husband” and “wife” to ensure equal application of marital rights and duties.
2. Inheritance Laws: Replace terms like “son” or “male descendants” with “child” or “heir” to ensure equitable distribution of property.
3. Court Procedures: Refer to “applicant” or “litigant” instead of “he” or “she” to represent all individuals equally.

The Kaduna State Customary Courts Law¹⁰¹ serves as the foundational legislation for the establishment of the Customary Court in Kaduna State. This law encompasses provisions that confer criminal jurisdiction upon the Customary Court, along with guidelines that govern the Court's exercise of this jurisdiction. The Law is also over a decade old and understandably has a number of the legislative drafting flaws resplendent in the Federal Capital Territory Customary Court Act 2007. For example, section 22 of the Kaduna State Customary Courts Law, 2001 provides; “A Customary Court shall have jurisdiction to try and determine criminal cases and to impose such punishment thereof as are prescribed in the Second Schedule to this law, or any other law enacted by the Kaduna State House of Assembly.”

The Lagos State Customary Courts Law¹⁰² provides in Section 3; “A person shall be qualified to hold the office as the President of a Customary Court if the person is-” this presents more effective use of plain language which activates more improved drafting to reflect gender neutrality as opposed to what is obtainable in Section 4 of the Federal Capital Territory Customary Court Act 2007 which provides; “(2) Without prejudice to the provisions of subsection 1 (a) and (b) above, no person shall be appointed a member of a Customary Court unless-

¹⁰¹ 2001 (as amended)

¹⁰² 2018

(a) he is a person of good character; . (b) he is not less than twenty-five years and not more than sixty years of age; (c) he is not in any full-time employment”. The use of the gender specific “he” does not particularly reflect modern drafting rules and the proposed amendment will suggest a better draft substituting “the person” for all of the subsections where the pronoun is used.

The Rivers State Customary Court Law¹⁰³ also has the use of the Gender specific “Chairman” in Section 18 and subsequent sections where the head of the panel of judges is referred to. This also reveals challenges such as jurisdiction, procedural aspects and the integration of customary practices within the formal justice system. These defects in the structure of the legislations, ambiguities and insufficient use of appropriate words, punctuations and marginal notes make the applicability of the laws quite cumbersome.

Customary law is founded on unwritten traditions, whereas statutory law is established through written statutes enacted by legislative bodies. The origins of customary law lie in the customs, traditions, and practices of a community. In contrast, statutory law is formulated through formal legislative processes. Customary law exhibits greater flexibility and adaptability, allowing it to respond to societal changes, while statutory law is characterized by its rigidity and necessitates formal procedures for any amendments. Traditional leaders and customary courts serve as guardians and interpreters of customary law in Nigeria. These leaders are essential in maintaining and safeguarding customary practices within their respective communities.

The process of drafting legislation for customary court laws in Lagos, Oyo, and Plateau States offers valuable insights into how that this research places these legislative instruments on the spotlight in order to unearth the needed amendments. Policymakers can leverage these experiences to create legal frameworks that honor traditional practices, uphold justice, and foster

¹⁰³ No. 3, 2014

legal consistency throughout Nigeria. The essential task is to harmonize customary traditions with contemporary legal standards, thereby ensuring that the judicial system remains accessible, inclusive, and equitable.

CHAPTER FIVE

Summary, Recommendations and Conclusion

This chapter provides a thorough examination of the dissertation's conclusions by summarizing the findings, offering recommendations, highlighting contributions to knowledge, identifying areas for future research, and presenting final thoughts. The analysis focuses on contemporary legislative drafting practices in Nigeria, which now emphasize clarity and simplicity, the use of plain language, gender neutrality, and consistent terminology. This approach aims to eliminate ambiguity and excessive legal jargon, ensuring that laws are accessible to their intended audiences, including legislators, judges, legal professionals, and the general public. The research has identified significant aspects that necessitate amendments to the Federal Capital Territory Customary Court Act of 2007, aligning it with enhanced drafting principles and suitable styles for effective interpretation and application of the Act.

5.1 Summary of Findings

Key findings include:

Wrong/inappropriate use of uppercase/bold/capital letters in the long title: The practice of employing bold or capital letters in the long title in legislative drafting in Nigeria has faced criticism for lacking a logical basis. This approach does not adhere to the established principles of boldness and capitalization in legislative documents. This research therefore proposes an amendment that has the long title all in lower case/small letters.

Convoluting Expressions, ambiguities and the attendant confusion: The lack of coherence in Sections 2, 25 and 14 of the Federal Capital Territory Customary Court Act, 2007 underscore the advantages of conducting this legislative drafting analysis. The research now suggests amendments and the creation of a more coherent alternative structure, ensuring that each sentence

transitions seamlessly into the next without abrupt changes. Furthermore, the proposed legislative draft emphasizes the connections between previously established information and new concepts, thereby clarifying the organization of ideas and policies for the reader through a fluid progression of sentences.

Obsolete sections that need to be replaced in the light of the Evidence Act¹⁰⁴: In broad terms, repeal refers to the act of canceling or revoking legislation. To repeal signifies the abolition of a statute, rendering it void and ineffective immediately upon its repeal. This research has specifically and chronologically identified the sections of the 'New Evidence Act' that replicate or amend provisions from the 'Old Evidence Act'. This research finds that the Sections of the Evidence Act¹⁰⁵ applicable to Federal Capital Territory customary court are Sections; 16, 17, 18, 19, 70, 125, 126, 127, 107, 34, 85, 131, 132, 175, 197 and 251. A consequential amendment of Section 65 of the Federal Capital Territory Customary Court Act¹⁰⁶ to reflect the current position of law now becomes necessary.

The evident bias present in particular gender classifications: This study highlighted areas where predominantly masculine language was utilized. The recommended modification advocates for the adoption of gender-inclusive language, which entails formulating legislative sentences in a manner that avoids discrimination against any specific sex, social gender, or gender identity, while also refraining from reinforcing gender stereotypes. Contemporary customary law drafts increasingly incorporate gender-neutral terms like “spouse” instead of “husband” or “wife” and “parent” instead of “father” or “mother.” Marriage Laws: “spouses” instead of “husband” and “wife” to ensure equal application of marital rights and duties. Inheritance Laws “son” or “male descendants” is replaced with “child” or “heir” to ensure equitable distribution of property. In

¹⁰⁴ 2011

¹⁰⁵ 2011

¹⁰⁶ 2007

Court Procedures: “applicant” or “litigant” instead of “he” or “she” to represent all individuals equally.

In summary, the dissertation presents a legislative drafting analysis of the Federal Capital Territory Customary Court Act, 2007 and extensively unveils identified sections and subsections that need required amendments especially with the need to ensure that the legislations fully fulfils the core purpose of the formation of a customary court for the Capital of Nigeria in the light of modern legislative drafting and global best practices.

5.2 Recommendation

In light of the findings presented in this research, the following recommendations are suggested to tackle the identified challenges and improve the efficacy of the Act that established the FCTCC.

1. To replace and correct the wrong/inappropriate use of uppercase/bold/capital letters in the long title especially as the use of bold/upper case or capital letters in the long title in legislative drafting in Nigeria lacks a logical basis. The following draft long title will be more efficient; “A Bill for An Act to Establish the Federal Capital Territory Customary Court, Abuja, to exercise jurisdiction over persons within the territorial limits of the Federal Capital Territory Abuja, and over persons outside the territorial limits of the Federal Capital Territory Abuja, who submit to the jurisdiction of the court, prescribes the mode of its operation and supervision for speedy dispensation of Substantial Justice at little cost and time, promoting cultural values and fundamental rights of residents of the Federal Capital Territory Abuja”
2. Use of new enacting formula: The Enactment clause is redrafted to reflect the National Assembly drafting style; “ENACTED by the National Assembly of the Federal Republic of Nigeria”

3. The explanatory memorandum offers sufficient clarification on the intentions of the newly introduced legal framework, helping to interpret the act in case of disputes about its actual purpose. This research proposes an “EXPLANATORY MEMORANDUM” to be included in the amendment Bill so as to detail the theme and purpose of the Act as suggested; “This Act Establishes a Customary Court for the Federal Capital Territory Abuja, to exercise jurisdiction over persons within the territorial limits of the Federal Capital Territory Abuja, and over persons outside the territorial limits of the Federal Capital Territory Abuja, who submit to the jurisdiction of the court, prescribes the mode of its operation and supervision for speedy dispensation of Substantial Justice at little cost and time, promoting cultural values and fundamental rights of residents of the Federal Capital Territory Abuja”
4. Sections 2, 25 and 14 of the Act, 2007 to be amended with adequate use of clarity and simplicity, plain language. The creation of legislation that is clear and readily comprehensible to the reader is a primary objective for the drafter. Consequently, the implementation of plain language is a crucial factor that can enhance clarity in legal drafting. This approach can significantly facilitate understanding of the law and uphold high standards.
5. In a democratic society, it's important that laws are understandable to all citizens. This empowers people to participate in the democratic process, make informed decisions, and hold their government accountable. Using plain language makes laws and regulations accessible to a wider audience, including those who may not have a legal background. This ensures that everyone understands their rights and obligations without needing a legal expert to interpret the text. Clear and simple legislation also makes it easier for individuals and businesses to comply with the law. When laws are written in plain language, there's less risk of misinterpretation or misunderstanding, which can lead to higher rates of

compliance. Plain language promotes transparency in government and legal processes. It allows citizens to see and understand how laws are made and how they affect their lives. This transparency fosters trust in the legal system and the government. Simplified legislation can reduce the time and resources spent on legal disputes and interpretations. Lawyers, judges, and court systems can operate more efficiently when the laws they work with are straightforward and unambiguous.

6. **Public Awareness Initiatives:** Informing the public about newly enacted laws and regulations through media campaigns, workshops, and community outreach programs can enhance comprehension and adherence. The use of technology, including mobile applications and websites, to share legal information can increase accessibility. Online platforms can offer straightforward access to legislative drafting resources, texts, summaries, and updates.
7. **Engagement of Stakeholders:** Involving stakeholders in the legislative process can guarantee that laws are feasible and take into account the viewpoints of those impacted. This approach can result in improved adherence.
8. **Incorporation of Visual Aids:** Utilizing visual aids, including infographics and videos, can facilitate the explanation of intricate legislative drafting principles and legal concepts in a more comprehensible manner.

5.3 Contribution to Knowledge

This research ‘A Legislative Drafting Analysis of the Act, 2007 enhances the comprehension of legislative drafting by underscoring the significance of clarity, simplicity, and precision, while also incorporating gender sensitivity. It identifies particular aspects of the Federal Capital Territory Customary Court Act, 2007 that require amendments to improve the thorough application of the legislation.

This research contributes to knowledge in the following ways;

1. Identifying the wrong/inappropriate use of uppercase/bold/capital letters in the long title and proposing a redraft that suits modern legislative drafting principles.
2. Identification of the obsolete enacting formula and replacing same with the suggested use of new enacting formula:
3. Appreciating the importance and role of the explanatory memorandum which offers sufficient clarification on the intentions of the Act which establishes a Customary Court for the Federal Capital Territory Abuja, to exercise jurisdiction in specific pedestals.
4. Highlighting the true meaning in the use of specified terms in legislative drafting with adequate use of clarity and simplicity, plain language. This is because the creation of legislation that is clear and readily comprehensible to the reader is a primary objective for the drafter.
5. Further development of democratic values and highlights on the need for government transparency which fosters trust in the legal system and the government.
6. Pushing for the need to participate in public awareness initiatives to informing the public especially with the use of technology, including mobile applications and websites, to share legal information can increase accessibility.

In summary, this research contributes to knowledge particularly in the amendment to the Federal Capital Territory Customary Court Act which is annexed to this dissertation as a culmination of all the findings and specific recommendations. Legislative drafting remains an evolving dimension for efficiency in law and justice. Society evolves where everyone can extensively activate and enforce their rights/freedoms when they are clearly defined in legislative texts.

5.4 Suggested Areas for Further Studies

This research paves the way for further exploration in various domains. Below are several promising avenues for additional studies concerning the nuances of modern legislative drafting in Nigeria:

1. Native Intelligence, Legislative Drafting, and Technology Integration: Investigating the potential of digital tools and platforms to improve the legislative drafting process, particularly through the application of artificial intelligence and machine learning.
2. Comparative Legislative Studies: Analyzing legislative drafting methodologies in other nations and contrasting them with Nigeria's practices to uncover best practices and opportunities for enhancement.
3. Public Participation in Legislation: Examining strategies to bolster public engagement in the legislative process, including public consultations and feedback mechanisms.
4. Legislative drafting Literacy strategies for development: Creating and assessing legal literacy initiatives designed to inform the public about their rights and obligations under the law.
5. Impact of Legislation on Economic Development: Evaluating how the quality of legislation influences economic growth and identifying strategies for drafting laws that foster economic advancement.

6. Legislative Drafting Ethics: Investigating ethical issues in legislative drafting, focusing on transparency, accountability, and fairness. This will undeniably investigate the realities that constitute professionalism and ethical requirements for developing legislations.
7. Legislative Drafting and Customary Law Integration: Establishing training programs for legislative drafters to enhance their expertise in contemporary drafting techniques, particularly in ways that incorporate customary law and traditional practices in Nigeria.

These areas can contribute to the development of more effective, transparent, and accessible legislation in Nigeria.

5.5 Conclusion

In Conclusion, this dissertation has undertaken a legislative drafting analysis of the Federal Capital Territory Customary Court Act, 2007. In conducting this research, keen consideration was made to the existing legal framework and the legislative drafting principles that guide modern style and specifics for efficiency and credibility of laws especially as it affects proper understanding, interpretation and implementation.

The first research question scrutinized the use of bold/capital/uppercasse letters, correct words and how much of a detailed statement of the scope and the main ways in which the Act is intended to have effect is captured. This led to the suggested amendment that conforms with modern ideals in legislative drafting.

In addressing the second and third research questions, this research identified the absence of marginal notes for sections 39, 40 and 41. In addition the first two sections of Part VII have no marginal notes. Marginal notes summarize content to help readers navigate through the legislation more easily. This led to the proposed amendment to the Act with appropriate marginal notes inserted particularly for the purpose of equipping the Act with better internal aids to

statutory interpretation. For example; section 39 of the principal act is amended by inserting a marginal note- “motion for inspection of movable or immovable property”. Section 40 of the principal act is amended by inserting a marginal note- “power of court to grant bail in criminal trials”. The extent to which legislative drafting principles and stages remain relevant to style and composure for a meticulous appreciation of the underlying purpose of the Federal Capital Territory Customary Court Act, 2007

The fourth research question scrutinized the intricacy present in both the language and the stylistic elements of the legislation. as a result of the traditional legislative drafting pattern with the attendant complicated comprehension and interpretation of the Act which opened up the need to amend sections 2, 25, 14 and 18 adopting plain language and gender-neutral terms.

The fifth research question also keenly considers how Legislative Drafting techniques and principles aid in improving the quality of the drafting style, revealing the necessity for proposed amendment of the Act establishing the Federal Capital Territory Customary Court. This research is brought to a final conclusion with the annexure which is a proposed amendment to the Act establishing the Federal Capital Territory Customary Court.

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EXPLANATORY MEMORANDUM

This Bill seeks to expand the scope and clearly set out the territorial jurisdiction of the Federal Capital Territory Customary Court using plain language, empower the Federal Capital Territory Customary Court to exercise jurisdiction over persons within the territorial limits of the Federal Capital Territory Abuja, and over persons outside the territorial limits of the Federal Capital Territory Abuja, who submit to the jurisdiction of the court, prescribes the mode of its operation and supervision for speedy dispensation of Substantial Justice at little cost and time, promote cultural values and fundamental rights of residents of the Federal Capital Territory Abuja to adopt gender neutral pronouns, increase the monetary jurisdiction limit for each grade of court and replace the sections of the repealed Evidence Act with sections of the Evidence Act 2011 that are applicable to the Federal Capital Territory Customary Court.

The Federal Capital Territory Customary Court (Amendment) Bill, 2024

ARRANGEMENT OF CLAUSES

Clause-

1. Amendment of the long title and the Enactment Clause
2. Amendment of Section 2 of the principal Act
3. Amendment of Section 25 of the principal Act
4. Amendment of Section 14 of the Principal Act
5. Amendment of Section 18 of the Principal Act
6. Amendment of Section 65 of the Principal Act
7. Marginal notes provided for sections 39, 40, 41, 42 and 43 of the Principal Act
8. Citation

The Federal Capital Territory Customary Court (Amendment) Bill, 2024

A Bill

For

An Act to amend the Federal Capital Territory Customary Court Act 2007, for the court to exercise jurisdiction over persons within the territorial limits of the Federal Capital Territory Abuja, and over persons outside the territorial limits of the Federal Capital Territory Abuja, who submit to the jurisdiction of the court, prescribes the mode of its operation and supervision for speedy dispensation of Substantial Justice at little cost and time, promote cultural values and fundamental rights of residents of the Federal Capital Territory Abuja and for related matters.

Sponsor:

[]

Commencement

Enacted by the National Assembly of the Federal Republic of Nigeria-

- | | |
|--|--|
| 1. The Federal Capital Territory Customary Court Act, 2007(in this Bill referred to as “the Principal Act”) is amended as set out in this Bill. | Amendment of the Federal Capital Territory Customary Court Act, 2007 |
| 2. Section 2 of the Principal Act is amended by substituting the existing section “2”, for a new section “2” –

“2. (1) A Customary Court shall consist of a Presiding Judge and two other judges who shall be referred to as customary court judges, all of whom shall be appointed by the Judicial Service Committee.

(2) For the purpose of hearing any civil cause or matter, three Judges shall constitute a quorum. One Judge shall constitute the court for the purpose of hearing any criminal matter, mobile court or quasi-criminal trials.

(3) In civil matters, proceedings with two judges is valid and a Judge who did not take part in the entire hearing of a cause or matter shall not participate in the judgment of the court.” | Amendment of Section 2 of the Principal Act |
| 3. Section 25 of the Principal Act is amended by substituting the existing subsection “(2)” for a new subsection “(2)”- | Amendment of Section 25 of the Principal Act |

- “(2) In the absence of a quorum a judge present or any person authorised by the Presiding Judge may adjourn the sitting to a place convenient for all parties”
4. Section 14 of the Principal Act is amended by substituting the existing section “14” for a new section “14”-

Amendment of Section 14 of the Principal Act

“14. A Customary Court shall have and exercise jurisdiction over all persons within the territorial limits of the Federal Capital Territory, Abuja and shall have and exercise jurisdiction over persons outside the Federal Capital Territory, Abuja who submit to the jurisdiction of the Court.”
 5. Section 18 of the Principal Act is amended by adding the word “custody” immediately preceding “guardianship” to the existing subsection “(2)”-

Amendment of Section 18 of the Principal Act

“(2) In any matter relating to custody and/or guardianship of a child, the interest and welfare of the child shall be the first and paramount consideration”
 6. Section 65 of the Principal Act is amended by substituting the existing section “65” for a new section “65”-

Amendment of Section 65 of the Principal Act

“65. The Customary Court and Customary Court of Appeal FCT Abuja shall in Judicial Proceedings be bound by the provisions of sections; 16, 17, 18, 19, 70, 125, 126, 127, 107, 34, 85, 131, 132, 175, 197 and 251.”
 7. Marginal notes are provided for the following sections of the Principal Act:

39.-----	“Motion for inspection of movable or immovable property”
40.-----	“Power of court to grant bail in criminal trials”
41.-----	“Execution of orders of any court of law in Nigeria”
42.-----	“Establishment of the Inspectorate Division”
43.-----	“Functions of the Inspectorate Division”

- | | | |
|----|---|----------|
| 8. | The Bill may be cited as the Federal Capital Territory Customary Court (Amendment) Bill, 2024 | Citation |
|----|---|----------|