



**CHALLENGES OF LEGISLATIVE DRAFTING
AND VIABLE MEANS FOR IMPROVEMENT
OF THE QUALITY OF BILLS & LEGISLATION**

ABDUL PELUMI GANIYU

University Of Ilorin, Ilorin Nigeria

pelumiabdul01@gmail.com

ABSTRACT

Legislation is not just a science, it is an art that involves skills and crafts. Legislative drafting is not just about drafting the law but also communicating the law to the society. As a result, drafting of legislations and quality bills involve a rigorous process to achieve the intention of the lawmakers and purpose for which the legislation is made.¹ In Nigeria like the rest of the world, there are challenges during the process of drafting quality bills. Therefore, the focus of this paper would be to discuss the challenges in Nigerian legislative drafting and viable and workable solutions would be provided herein for there to be improvement of the quality of bills and legislations in Nigeria.

¹ Modish Project 'Legislative Drafting in Law Making: An Analysis of Challenges in Light of the Constitution of Nigeria' available at <<https://www.modishproject.com/legislative-drafting-law-making-analysis/>> accessed 14th December 2022

INTRODUCTION

Legislative drafting is the process by which a legislative proposal is put in bill form ready for presentation to parliament for passage into law. Crabbe² described the importance of legislation as the government needs legislation to govern. In every democratic state, there is a need for well drafted, readable and understandable legislation. Legislation is important to every government for the maintenance of a stable society as it is equally important to the governed, whose rights and duties are embedded in them.

Legislative drafting is not a game of snakes and ladder that is subject to chance, it involves skills and highly technical discipline acquired and sustained not meant for children, amateurs or dabblers.³ This is why as a general rule, draftsmen follow stipulated rules and norms in drafting legislation. However, the environment where the law is drafted may affect and have impact that might be constraints that could lead to deviation from the drafting convention. This is the peculiarity of the situation in Nigeria democratic system. There have been challenges faced in the drafting processes of legislation in the country thereby constituting hindrance to having an effective and quality legislation in the country.

CHALLENGES OF LEGISLATIVE DRAFTING IN NIGERIA

- **The Constitution**

The foremost challenge to legislative drafting in Nigeria is the Nigerian constitution itself. The 1999 Constitution of the Federal

² Crabbe VCRAC, *Crabbe on Legislative Drafting* 2nd edition (Lexis Nexis 2008)

³ Reed Dickerson, 'Legislative Drafting: A Challenge to the Legal Profession' (1954) Article by Maurer Faculty 1492

Republic of Nigeria (as amended) provides that:⁴ “This constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria” Also in the case of *Olafisoye v FRN*,⁵ It was held by the Supreme Court that the Constitution is the ground norm of all laws in Nigeria and any law inconsistent with the constitution shall be null and void. The above provisions of the constitution and numerous decisions of courts in Nigeria have restricted the ability of drafting relevant laws and give room for most members of the drafting committees in the National Assembly (and State House of Assembly) not to draft quality bills in Nigeria. This is unlike what operates in the United Kingdom, where the parliament is superior to the constitution and could make laws for the public general benefits and interest contrary or not in line with the provisions of the constitution.

For example, the Public Order Act was enacted in 1986 in Nigeria when religious violence was rampant in the country.⁶ The Act subjects most religious activities to the authority of the state’ governor after rigorous readings and research into the best way to quash the anomaly. However, the Act was repealed and put on limited application in the case of *Inspector General of Police v All Nigerian People’s Party*.⁷ This among other repealed acts are discouraging the readiness of lawmakers to perfect and ensure quality laws are enacted in Nigeria.

⁴ Section 1(1)

⁵ [2004] 4 NWLR pt.864 580 SC

⁶ Enyinna Nwauche, ‘Law, Religion and Human Rights in Nigeria’ African Human Rights Law Journal vol.8 no22 2008

⁷ [2007] 18 NWLR pt.1066 457

- **Pressure**

Lawmakers are categorized as major tools of social engineering. This is because they have to write from the societal conduct from the past so as to deal with the present day and write from the present to deal with the future. Moreover, the lawmakers being employees of the government need to put the interest of their employer at the back of their mind and at same time need to meet up with societal expectations.

In Nigeria, there are instances where there is insufficient time to make important legislations or amendments and at same time, the lawmakers need to protect the government and the people's interest. They also have to take into consideration the interest of the legal practitioners that would read meanings to the law and that of the Judges that would interpret the laws. The pressure from these factors are too enormous for the lawmakers and it affects making quality laws in the country.

For instance, the reworked Electoral Act Amendment Bill 2022 before it was sent to the President for assent was said to be marred with overwhelming personal interest at the expense of the public expectation.⁸ This is due to the pressure on the National Assembly. Apart from pressure from the President, the two heights political parties (PDP and APC) also influenced various alterations to the bill by pressuring the assembly. The All Progressive People Congress (APC) have on 3 occasions pressured the National Assembly to make

⁸ Tony Akowe, 'National Assembly and Challenges of Lawmaking in 2021' available at <<https://thenationonline.ng.net/national-assembly-and-challenges-of-lawmaking-in-2021/>> accessed 14th December 2022

some alterations to the bill. First, they demanded for direct primary election, then they rejected such and opted for indirect primary election and later finalized that they would prefer a consensus.⁹ All these were inputted into the bill before it was finally halted at consensus. This shows the extent to which the law drafters are pressurized in the country.

- **The Reading Stages**

The reading stages involved in the law drafting processes is another impediment to quality bill making in Nigeria. For a bill to be passed into law in Nigeria, there are five rigid stages involved. There is the first reading, seconding reading, committee stage, the reporting stage and the third reading before assent by the President.¹⁰ Involved in these stages are rigorous tussle and bustle which cause waste of time in passing the bill into. Moreover, this has been making efforts of the lawmakers in making quality laws a futile exercise in the country. This is because there are some laws that need to meet up with exigencies at the time it was brought before the house, but could not achieve such due to the time wasted in passing such bills into law.

For example, the Petroleum Industry Act took 20 years¹¹ before it was finally enacted into law in 2021 and this could be attributed to

⁹ John Akubo & Matthew Ogune, 'Ignore Governor's Pressure, sign Electoral Act Now, PDP Lawmakers urge Buhari' available at <<https://guardian.ng/news/ignore-governors-pressure-sign-electoral-act-now-pdp-lawmakers-urge-buhari/>> accessed 14th December 2022

¹⁰ Naija Task, 'Stages For Passing a Bill into Law in Nigeria' available at <<https://naijastask.com.ng/stages-passing-bill-into-law-nigeria/>> accessed 14th December 2022

¹¹ David Thomas, "What You Need to know about Nigeria's Petroleum Industry Bill" available at <<https://african.business/2021/07/energy-resources/what-you->

the stages involved. Now, soon Nigerians would be clamoring for amendment of the Act as it would no longer be able to cater for future needs. This is by particularly considering the fact that things are changing rapidly in the petroleum industry and existing frameworks are no longer able to cater for such. So also delay caused by the processes in the lawmaking has halted the passage into law the Mental Health Act that has been before the house since 2003.¹²

- **The Draft-Men, The Tools and Communication of Passed Bills**

Another challenge to legislative drafting is the law drafters themselves. Majority of the legislative draftsmen in Nigeria lack the relevant skills required of a draftsman and thus impact the quality of bills passed in the house. Unlike lawyers, majority of the lawmakers in Nigeria lack the research drafting skills and communication abilities and meticulous attention for details and criticisms. For instance, the Land Use Act 1978 has been criticized for inconsistencies in the use of words as a result of poor drafting skills of the drafters. Particularly, considering provisions of *section 36(2) of the Land Use Act*, it provides that:

Any occupier or holder of such land, whether under the customary rights or otherwise howsoever, shall if that land was on the commencement of this Act being used for agricultural purposes continue to be entitled

[need-to-know-about-nigerias-petroleum-industry-bill/](#)> accessed 20th February 2022

¹² Nicholas Aderinto, "Nigeria urgently needs a Mental Health Act" available at <<https://punchng.com/nigeria-urgently-needs-a-mental-health-act/?amp>> accessed 20th February 2022

to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate local government and the reference in this subsection to land being used for agricultural purposes includes land which is in accordance with the custom of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.

There are inconsistencies in the provisions as a result of non-clarity in the use of words by the law drafters. The drafters intended that only the owner who is holder could obtain a customary right of occupancy in the land. However, due to the inconsistency by adding an occupier, many land occupiers who are not land owners tend to rely on the provision to hijack the customary land from the rightful owner (the holder). If not for well and calm interpretation by the Supreme Court in the case of *Garuba & Ords v Sa'adu Yakubu & Ords*¹³ that the drafters intended the holder as the owner not an occupier, hardship would be occasioned till date.

Also, the Nigerian legislature is unable to meet up with the other countries of the word as regards tools used in drafting their laws. Moreover, these tools are also one of the factors impeding communication of bills passed into laws to the general populace. The country's legislative house lacks technological advance tools that may facilitate communication of newly enacted laws to the public.

Means for Improvement of Quality Bills and Legislation in Nigeria

¹³ [1991] NGSC 1

The first prerequisite in curbing the challenges of legislative drafting in Nigeria so as to have quality bills and legislation is that legislative draft men must be lawyers. This is because they possess the knack for language use, research drafting skills and communicating abilities with meticulous attention to details and criticism. This is attributed to their knowledge of legal drafting and conveyance acquired at the law school and in their course of study as students of law in the university.¹⁴ Although the Nigerian National Assembly and states' legislative houses employ the services of the Directorate of Legal Services of the National Assembly and state House of Assembly respectively in drafting member's bills and private member's bills. However, all members are deliberately through the reading stages. Thus, ensuring the majority of the members are lawyers would ensure that bills passed into would be all encompassing with little or no lapses in such.

Moreover, it would also help ensure that plain language is used in the legislative drafting. It is evident that plain language is almost non-existent in Nigeria legislation.¹⁵ Plain language will help enhance communication to the audience as stack illiterates, laymen and Judges would understand the actual intention of the law drafters and purpose for which it is drafted.

¹⁴ Johnnie Uchenna, "Challenges of a Draftman in Contemporary Democratic in Nigeria" available at <https://www.google.com/amp/s/docplayer.net/amp/47517607-Challenges-of-a-draftsman-in-contemporary-democratic-nigeria-johnnie-uchenna-ejiogu.html> accessed 15th December 2022

¹⁵ Michael Duada, 'Plain Language in Drafting Legislation in Nigeria: The Possible Benefits' Institute of Advanced Legal Studies University of London 2015-2016

Another viable means for improvement of quality bills and legislation in Nigeria is ensuring accessibility of legislations to the public. Having in mind the gross number of the people that would read and access legislation would trigger the draftsman to ensure that quality bills are passed into law. Moreover, accessibility of legislation is part of the rule of law.¹⁶ It gives citizens the right to know by which law they are governed and is a fundamental component of certainty.¹⁷ It will also help ensure that legislation receives democratic legitimacy as more people are likely to obey the law as they have access to it and its content.¹⁸

Also, there is a need to use advanced technology such as legislative information management software to help facilitate drafting, consolidating and publishing of quality bills and legislation in Nigeria. With implementation of conventions¹⁹ and standards, standardized applications, expressions and terminology would be introduced to ensure there is standardization of methods used to effect the drafting of new legislations and amending existing ones. Unlike using the traditional word processor in manually editing, formatting, correcting and managing legislative drafts, modern software technology would help remove non-drafting tasks as well as ensuring well-structured and standardized drafts.

Technology would also help ensure that international norms are inputted into the drafting process and would facilitate the reading

¹⁶ Ronan Cormacain, 'Have the Renton Committee's Recommendations on Electronic Access to Legislation Been Fulfilled?' (2013) 19(3) EJCLI

¹⁷ Black Clawson Ltd v PapierWerke AG (1975) AC 591

¹⁸ Merkur Island Shipping Company v Laughton (1983) 2 All ER 189 HL

¹⁹ That is convention pertaining to style, template layout and structure

stages before the legislative houses in Nigeria. This is because using the technological software tools as used in Canada²⁰, would help recognize which parts of legislation commands need to be applied, thus saving hours of copying and pasting as under the existing framework for amendment of legislations. In addition, technological tools will help in recognizing origin of modification and automatically create a historical repository of any legislative command. Thus, improving the quality of legislation.

CONCLUSION

Not that there have not been quality bills and legislation in Nigeria, efforts of the legislative draftsmen and the legislative houses are highly commended. However, there have been challenges in the legislative drafting processes and thus serving as impediment to having quality bills in Nigeria. The challenges have been discussed in this paper with relevant examples. Also, viable solutions and suggestions have been provided in this paper for there to be a means of improving quality bills and legislation in the country.

²⁰ Tonye C. Jaja & Chantal Lamarre, 'Application of Information Communication Technology (ICT) to Legislative Drafting: Case Studies of Legislative Drafting Assistant Softwares in Nigeria and Canada' *Periodico Internazionale Del, CNR-IGSG Fascicolo 2-2020*