

Post Legislative Scrutiny as a Mechanism for Effective Legislation

Debakeme Christopher Ogbu³

Abstract

The law books in Nigeria are inundated with spent, obsolete and anachronistic laws with no capacity to achieve their targeted legal objectives in spite of the enormous constitutional powers of the National Assembly to evaluate and reform them upon implementation to synchronise them with current realities. There is no systematic institutionalized mechanism in Nigeria to automatically prompt review and evaluation of legislation for possible reform of moribund, spent and anachronistic legislation with current realities to synchronise them. The paper aimed at bringing to the fore the necessity to conduct Post-legislative Scrutiny on existing legislation upon implementation to determine its effectiveness or otherwise as legislation cannot remain effective for eternity in the face of changes in the society. The objectives of the study include examining the concept of Effective Legislation and the criteria for determining effective legislation in Nigeria and to ascertain the existence of legal and institutional framework for the conduct of Post Legislative Scrutiny in Nigeria. The study adopted doctrinal method in the analysis of data in achieving the objectives of the study mentioned above. In the course of the study, the researcher also employed comparative research approach to see how the concept of Post legislative scrutiny is practised in different countries. The study found that legislation cannot remain effective in perpetuity in the face of societal changes despite the professionalism infused into the drafting of it and the observation of the global best legislative drafting theories, principles and conventions. It was also found that Nigeria has no institutionalized systematic mechanism to automatically trigger evaluation of the impacts of laws enacted by the legislature in the past to determine their effectiveness. The recommendations that are made on the basis of these findings are that Post-Legislative scrutiny be carried out at regular intervals on subsisting legislations by a designated committee of both Houses of the National

³ (debakemec@gmail.com)

Assembly to correct identified errors in legislation and possibly amend the legislation where necessary to synchronize the legislation with current realities. Furthermore, all legislations passed by the National Assembly should contain a review clause and ministerial undertaking to submit Memorandum of Implementation to the National Assembly to automatically set in motion the process of Post-Legislative Scrutiny as and when due. The conclusion that is made at the end of the study is that post legislative scrutiny is a sure correctional mechanism for effective legislation and as such is worthy of incorporation into the Nigerian parliamentary practice.

Keywords: Post, Legislative, Scrutiny, Mechanism, Effective, Legislation.

1. Introduction

Legislation as a unique regulatory instrument for building and managing society is enacted to achieve targeted legal objectives or philosophies at all times. It is never whimsically enacted in vacuum for other purposes than control. Against the backdrop of its efficacy as an instrument of control, virtually every society including Nigeria employs it to achieve desired objectives. There is no sector of the Nigerian economy that does not have at least a piece of legislation regulating it. Some sectors have multiple legislation regulating every conceivable aspect of it for the purpose of achieving the diverse legal objectives or philosophies associated with the sector.

In spite of the existence of legislation regulating every sector of the Nigerian economy, seemingly. The targeted objectives of the legislation are yet to be achieved. Also, the targeted mischiefs of the legislation still persist pointing convincingly to the conclusion that the legislation are not satisfactorily effective in the direction of achieving desired objectives or correcting targeted mischiefs. There is substantial deficit in the achievement of targeted objectives of the legislation and the realities on ground.

Some of the legislation in Nigerian Law books have diminished in their deterrence or regulatory capacities to the extent that they can be conveniently described as spent, outdated, obsolete and anachronistic. The deterioration in the deterrence and regulatory capacities of the legislation can be linked to long passage of time with the inevitable concomitant societal changes which includes technological advancements without

subsequent amendment or other means of reform to rejuvenate them for effectiveness.

Generally, Legislation needs constant review for update to bring it in tune with current realities as no legislation can remain effective in perpetuity in spite of the professionalism that was infused into the drafting of it and the observance of global best practices, principles and theories in legislative drafting. It is humanly impossible for the drafter or legislator to draft legislation that would cover every situation that might arise in the future.⁴ There is no superhuman in the field of legislative drafting that is capable of anticipating every conceivable circumstance that might occur in the future and make provisions in the legislation to address it. Legislation enacted in the 20th century cannot remain optimally effective in the achievement of its objectives in the 21st century. This is because societal changes cause gaps/distortions in legislation and consequently affect their effectiveness.

The present study is undertaken to bring to the fore the necessity to evaluate legislation subsequent upon enactment and implementation to determine its effectiveness or otherwise in terms of the universally established ingredients of effectiveness of legislation. The systematic evaluation of legislation after enactment and implementation is what is technically known as Post-Legislative Scrutiny. What then is Effectiveness of Legislation and its ingredients?

2. Effective Legislation

Effectiveness is the defining element of ‘Quality Legislation’ in the field of legislative drafting.

Effective legislation in its simplest meaning refers to legislation that is clear, precise, and unambiguous and produces the wanted or intended result. Throughout this work, the phrase “effectiveness of legislation” and “effective legislation” are used interchangeably.

Professor Helen Xanthaki defined effectiveness of legislation to mean that the legislation “manages” to introduce adequate mechanisms capable of producing the desired

⁴ M. Douglass Bellis, *Statutory Structure and legislative Drafting Conventions: A Premier for judges* (Washington D.C.: Federal Judicial Center 2008) p.1 cited in T.C.Jaja, “*Legislative Drafting and Statutory Interpretation: An Introduction*” (Malthouse Press Limited 2017) p.1

regulatory results.⁵ In other words, “effectiveness” focuses on the “effects produced by legislation and the purpose (objective) of the statute passed...”⁶

Dr Jaja defines effectiveness as “meaning the inclusion of adequate mechanisms for implementation, enforcement, impact and compliance within a legislation such that the legislation is capable of producing desired regulatory results”.⁷

Effective legislation refers to legislation that is well drafted in terms of clarity, precision and unambiguity, and capable of achieving predetermined objectives or remedying targeted mischiefs. Legislation can only be correctly referred to as effective when the words in the legislation clear, precise and unambiguous, and produces the desired results. Closely related tools are gender-neutral drafting and plain language (avoid legalese). Clarity is the quality of being clear and easily perceived or understood. Precision is defined as exactness of expression or detail. Unambiguity is certain or exact meaning’.⁸ Ambiguity occurs when words can be interpreted in more than one way.” According to madder Acts of parliament should be clear, comprehensible, coherent, and consistent with existing Acts or policies; the text of the Act should correspond with its policy objectives and should be drafted in simple and accessible language to be effective.⁹ Any legislation that fails to achieve its targeted objectives cannot be said to be effective despite how well it is drafted. In other words, “effectiveness” focuses on the “effects produced by the legislation and the purpose (objective) of the statute passed...” Effectiveness as the key criterion of quality legislation has clarity, precision and unambiguity as its tools.¹⁰ Muller defines effective legislation to

⁵ H. Xanthaki, “Drafting Manuals and Quality in legislation: Positive Contribution Towards Certainty in the Law or Impediment to the Necessity for dynamism of Rules?” *Legisprudence*, Vol.4, No, 2, pp. 111-128 at p.111,116.

⁶ H. Xanthaki, “On Transferability of Legislative Solutions: The Functionality Test” in C. Stefanou and H. Xanthaki (eds) *Drafting Legislation: A Modern Approach* (Ashgate publishing, 2008) pp. 1-18 at p.6

⁷ *Ibid* (n 39)

⁸ H. Xanthaki, ‘Drafting Manuals and Quality in legislation’ (2010) *Legisprudence*, Vol. 4 No.2, pp, 111-128 at 111, 116

⁹ G. Teubner, ‘Regulatory Law: ‘Chronicle of a Death Foretold’ (1992) *Socio-legal Studies* pp.451-75 cited in H. Xanthaki, “On Transferability of Legislative Solutions: The Functionality Test” in C. Stefanou and H. Xanthaki (eds) *Drafting Legislation: A Modern Approach* (Aldershot, Ashgate Publishing, 2008) p.6 cited in Tonye Clinton Jaja, *Legislative Drafting- An Introduction to Theories and principles* at p.3

¹⁰ H. Xanthaki, “On Transferability of Legislative Solutions: The Functionality Test” in C. Stefanou and H. Xanthaki (eds) *Drafting Legislation: A Modern Approach* (Ashgate Publishing, 2008) pp. 1-18 at p.6

mean quality legislation... the quality of legislation in this sense is defined in terms of enforceability, consistency, comprehensibility, transparency, clarity, plainness and accessibility.

It is therefore deducible from the definitions already given that clarity, precision, unambiguity, and capacity to produce the desired result are the ingredients or criteria with which the effectiveness of legislation can be determined. All the ingredients just mentioned must exist for legislation to be effective. The effectiveness of a piece of legislation can only be determined upon implementation because it is only then one can determine whether the targeted objectives of the legislation have been achieved or not.

If the above ingredients are used to determine the effectiveness or otherwise of legislation, then it appears that some legislation in Nigeria do not answer to the description of effective legislation as stated above. This is because some legislation in Nigeria have failed to produce their targeted results on implementation therefore causing the persistence of targeted mischiefs.

The security challenges currently facing the country with no abatement on sight would not have arisen if the legislation relating to the security architecture were effective.

The rate of corruption would have ebbed away if the numerous legislation prohibiting every reprehensible tendency in the country were effective in terms of producing desired results. For instance, in a bid to reduce corruption and related crimes to the barest minimum, there is a deluge of legislation in this regard. There is the Independent Corrupt Practices and other Related offences Act 2003, Advance Fee Fraud and Other Fraud related Offences Act, 2006, Economic and Financial Crimes Commission Act, 2004, Money Laundering (Prohibition) Act, 2011, Terrorism (Prevention) Act 2011, the Criminal Code Act,¹¹ the Penal Code Act,¹² the Code of Conduct Bureau and Tribunal Act,¹³ the Criminal or Penal laws of the various States of the Federation and others are all fashioned towards fighting

¹¹ Cap C15 LFN 2004

¹² Cap P3 LFN 2004

¹³ Cap C15 LFN 2004

corruption.

Our electoral system appears to be in a mess such that our elections are not credible and transparent. Elections in Nigeria are fraught with all manner of irregularities ranging from ballot stuffing to alteration of results to favour preferred candidate.

The legislation regulating these sectors are not effective with respect to achieving their targeted goals. Some of these legislations were enacted decades century ago without subsequent amendment or other means of reform to rejuvenate them for effectiveness and as such they are spent, outdated, obsolete and anachronistic. The legislation needs constant review for update to bring them in tune with current realities. No country can develop under spent, outdated, obsolete and anachronistic laws. A law which might have been effective at the time of enactment cannot remain effective in perpetuity irrespective of the professionalism that was infused into the drafting of it. Legislation being the mirror of society need to synchronize with the society in changing. Legislation is the major means through which governance is carried out in every country in the world. The development of a country is a function of the laws in operation in that country. No country can develop more than its laws.

The persistence of the targeted mischiefs of the legislation regulating the areas noted above points to the fact that the legislation is not effective in producing their desired result. As will be seen in the next section, there are factors militating against the effectiveness of legislation.

3. Factors Militating Against Effective Legislation

Effective legislation is seemingly unrealistic as it has defied all meaningful interventions from time immemorial till date. Legislation were not as they are today from the beginning. Earliest legislation did not carry the features of current legislation in the form of sections, subsections, paragraphs, punctuation marks, marginal notes, head notes, schedules, preambles, long and short titles, definition section, and writing in Plain English and gender equality drafting. All these are later interventions in legislation in pursuit of clarity, precision and unambiguity for effectiveness legislation, yet our law books are inundated with

legislation that are not effective. Several reasons have been adduced as responsible for the ineffectiveness of legislation among which are:

3.1 Multiplicity of Actors

Effectiveness of legislation is not a sole responsibility of the Legislative Counsel in spite of the fact that he contributes significantly to the quality of legislation. Collaborative efforts of other key players such as the legislative sponsors or the relevant Ministry or Department and the Legislators are responsible for quality legislation.¹⁴ The achievement of effectiveness of legislation can only be realized through the collaborative and systematic efforts of different actors involving the drafter on the one hand and “an interrelationship between actors in policy process, the implementation, enforcement and compliance process on the other hand.”¹⁵

The above position also has the support of Ulrich Karpen when he stated that the achievement of the objective of any legislation is not the sole task of the legislative drafter. It involves interrelation of actors in the policy process and legislative drafting process. It is a multi-level effort of policy-makers, drafters, legislators, interpreters (judges), and enforcers of legislation.¹⁶

Some legislation may be perfect in the drafting style, language used, punctuation, syntax and legislative expression, grammar, structure and arrangement, definition of terms and others but may not qualify as effective legislation because of poor implementation. Where legislation is poorly implemented and consequently failed to produce the targeted results, the legislation cannot be termed effective because effective legislation supposed to adequately provides for its own implementation or its implementation is provided by other existing law to produce the targeted legal objectives.

¹⁴ Vareem vanterpool, ‘A Critical Look at Achieving Quality Legislation’ (2007) *European Journal of Law Reform*, 167-204 at 170

¹⁵ Svetlana Pisarenko, ‘The Drafting of Laws’ (Canada-Ukraine Legislative Drafting Programme, 1999) p.7

¹⁶ U. Karpen, ‘the Norm Enforcement Process’ in Karpen and Delnoy (1996) pp51-61 at 51 cited in H. Xanthaki, On Transferability of Legislative Solutions: The Functionality Test’ in C. Stefanou and H. Xanthaki (eds) *Drafting Publishers*, 2008) pp 1-8 at p.5

3.2 Unorganized or Unsystematic Approach to Legislative Drafting

Scholars have rightly identified the lack of systematic or organized approach to legislative drafting as one of the causes of ineffective legislation. Patchet formulated seven strategy frame-work for quality legislation (effective legislation) among which are:

- (i) Creating and enforcing a regulatory framework for law drafting
- (ii) Improving policy development prior to drafting;
- (iii) Setting and maintaining law drafting standards;
- (iv) Making fuller use of consultations;
- (v) Applying equivalent procedures and standards to parliamentary initiatives;
- (vi) Applying equivalent procedures and standards to secondary law-making; and
- (vii) Improving access to legislation

Svetlana Pisarenko¹⁷ stated that an unorganized or unsystematic approach to legislative drafting is often identified as one of the major reasons for poor quality legislation in transitional and developing countries which include Nigeria.

Constantin Stefanou and Helen Xanthaki corroborated the above by saying that a near complete lack of unified methodology in the drafting of legislation nationally especially in the third world and emerging democracies contributes to ineffective legislation.¹⁸

Dr. Tonye Jaja also aligned himself with the above view by stating that the major root cause of the problem is the absence of a concrete or documented strategy that governs or guides

¹⁷ The Drafting of laws (Canada-Ukraine Legislative Drafting Programme, 1997) 7 cited in “Strategies for Improvement of the Quality of Bills and legislative drafting in Nigeria” by Dr. Tonye Clinton Jaja

¹⁸ Constantin Stefanou and Helen Xanthaki (eds) *Manual in Legislative Drafting (Department for International Development, 2004)* 4

the key actors involve in the production of legislation for production of good quality Bills and legislative drafting in Nigeria. According to him, the rules that govern legislative drafting, and the production of good quality Bills and legislation, ought to be clearly and “unequivocally” stated and specified within the provisions of the Constitution or any other primary or secondary legislation of any democratic society that upholds the rule of law.¹⁹

Lord Henry Thring²⁰ in his 1902 treatise on legislative drafting stated that the subjects of Acts of Parliament, as well as the provisions by which the law is enforced could admit of being reduced to a certain degree of uniformity; that the proper mode of sifting the materials and arranging the clauses can be explained.

In a nutshell, Lord Thring implies that the drafting of legislation should be undertaken in accordance with laid down rules, principles or guidelines that are applicable to Acts of Parliament” and with “little adaptation may, be applied to every sort of composition...” including delegated legislation. According to Lord Thring, the regulation of legislative drafting is an “essential requisite” to ensure that legislation accomplishes the design of the law giver.

The researcher is also of the view that the absence of a concrete documented legislation or guide for legislative drafting results in the lack of uniformity in the content and structure of Bills in Nigeria. This is evidenced by the remarkable difference in structure between Bills drafted by lawyers in the Drafting Department of the Federal Ministry of Justice and those drafted by lawyers in the Legal Services Directorate of the National Assembly of Nigeria respectively as stated by Sylvester Imhanobe.²¹

Contrary to the views expressed above, neither the constitution of the Federal Republic of Nigeria nor any existing legal framework with national coverage stipulates in any clear detail the procedure for drafting or improvement of law drafting and the quality of legislation to

¹⁹ Dr.Tonye jaja, *Strategies for Improvement of the Quality of Bills and Legislative Drafting in Nigeria*

²⁰ Lord Henry Thring, First Parliamentary Counsel of the United Kingdom cited in Henry Thring, *Practical legislation; the Composition and language of Acts of Parliament and Business Documents* (John Murray, 1902) 4

²¹ S. Imhanobe, *Principles of Legal and legislative drafting* (Abuja: Imhanobe Law Books Ltd, 2014)

ensure effective legislation.

3.3 Drafting of Legislation by Non-professionals

The use of non-professionals in the drafting of legislation contributes to the ineffectiveness of legislation. According to Dr. Tonye Jaja, the involvement of lawyers without cognate experience, formal qualifications and expertise in drafting is one of the major causes for poor quality Bills and legislative drafting in Nigeria. Lawyers who draft legislation engage in a highly technical aspect of law that requires competence. A failure to properly translate the substantive policy into the appropriate law adversely affects the policy. The lawyers are like midwives in the birth of laws and so it behoves them to strive hard to help bring forth laws that are effective, clear, precise, intelligible and capable of only one interpretation, which is the true purpose and intent of the policy as envisaged by the policy initiators.²²

Legislative drafting is not all-comers' affair. Legislative drafting is an area of specialist legal practice.²³ More than in the past, quality legislative drafting calls for persons who have systematically prepared themselves for this specialist work.²⁴

4.4 Lack of Adequate Time and Resources on Research, Debate and Consultation

Adequate time and financial resources are requirements for the production of effective legislation. It is the norm and not an exception that adequate time and resources is expended on conducting research and consultations before the enactment of Bills. In Nigeria, because of the scramble to sponsor Bills by members of the National Assembly, adequate time is not given to legislative counsel to draft a Bill. Legislative Counsel are always on pressure to complete the drafting of a Bill within limited time frame.

For instance, in June 2015, it was reported that within 10 ten minutes the Senate of the 7th National Assembly of Nigeria enacted forty-six (46) Bills, the said Senate "deemed all the

²² Clerk of the National Assembly of Nigeria. The Nation Newspaper of September 2, 2014

²³ H.Xanthaki, 'Legislative Drafting: A New Discipline of Law is Born' (2013) Institute of Advanced legal Studies, University of London, *IALS Student Review* 1, issue 1, Autumn 2013, pp 57-70

²⁴ See Law Drafting, SIGMA Paper No. 18, 1997, P. 42 Keith Patchet, OECD (1997)

Bills as having being passed first, second and third readings and passed them.²⁵ Poorly formulated policy cannot produce a quality Bill irrespective of the professionalism observed in the translation of the policy into legislation. Policy formulation requires money and time therefore where they are not provided, it will adversely affect the quality of the Bill and the resultant legislation.

3.5 Loopholes, Misinterpretation and Unintended Consequences

Loopholes, misinterpretations, and unintended consequences in legislation are inevitable occurrences despite the detailed and comprehensive research conducted prior to enactment of the legislation. The best language used and how hard we try to make the law airtight from the beginning to the end to ensure clarity, precision, unambiguity and efficiency of the legislation cannot completely prevent loopholes, misinterpretation and unintended consequences from occurring.

Sometimes the loopholes or unintended consequences will not be immediately obvious, and you won't find out about them right after the law has been passed, but they will become apparent overtime, sometimes after several years when the legislation has been implemented. But rarely, very rarely will a legislation work out exactly the way it was envisioned by the drafters and the legislators who enacted it. The limitation of legislation as an instrument of social control is generally acknowledged as a universal challenge.²⁶

The lofty goals of legislation are not always effectively achieved. This is because it is impossible to fully anticipate how any change in a society may ultimately affect it. The real-world implications of actions one takes may be far different from what seems logical and obvious, and the solution seems surefire. When significant issues are addressed with complex legislation, the results, more often not, will be dramatically different from what was originally intended. This is because human beings which the legislation tends to regulate to achieve social equilibrium are complex in character, and society as a whole in which the

²⁵ <http://thenationonline.net/passage-of-46-bills-its-legislative-recklessness-say-lawyers/accesed> 20th March, 2021.

²⁶ P.D Ocheje, Law and Social change: A Socio Legal Analysis of Nigeria's Corrupt Practices and Other related offences Act, (2001) Journal of African law, 45, 2, 173-179 cited in T. Jaja, Legislative Drafting: An Introduction to Modern theories and Practices (2012) (Wolf Legal Publishers, Netherlands) P.53.

legislation is to operate is vastly more complex. In some other times the various aspects of the complex issue which the legislation tends to correct is not well appreciated before the legislation is enacted.

The policy makers and the legislators that enacted the legislation are ignorant of the possible far-reaching effects of the legislation. It is impossible to anticipate everything, and to have all the information we need to know about a matter, and this leads to incomplete information.

Drafters and legislators are not able to get all necessary information within the time frame to draft Bills and this invariably leads to incorrect analysis of the problem which result in imperfect legislation.

Another reason that results in loopholes, misconceptions and unintended consequences is the erroneous following of habits that worked in the past which may not apply to the current situation. We are not able to get enough and accurate input from those who will be affected by the Bill and/ or those who will be implementing the Bill and this contributes to the lack of information that we need to perfect the Bill. But even if drafters were somehow able to get enough information and enough input, unintended consequences cannot be completely prevented or avoided by reason of the fact that the nature of the legislative process involves factors that are beyond the control of the drafters, which lead to unintended consequences. The words or phrases used in a Bill are sometimes determined by the sponsor of the Bill to satisfy certain interests for the successful passage of the Bill into law. It is worthy to mention that proposed Bills in Nigeria are sometimes greeted with suspicion and ethnic colouration until it is proved to be innocuous to the respective regions before it is supported. A Bill with the tendency to favour one section of the country against others will naturally not get the needed support for legislative attention when presented except an intensive lobbying is launched to sway majority of members to see reasons with the sponsors and supporters of the Bill for it to scale through the various stages in the legislative process.

It may be easier for drafters to ensure that legislation accomplishes its direct effect by

ensuring that most of the loopholes are closed, and that the language is specific and not vague or ambiguous. However, it is a lot harder and probably impossible to prevent or avoid all unintended consequence from the direct effects, which are the changes in behaviour and actions that occur in response to the legislation that cannot be anticipated or cannot be controlled even if they are anticipated. Individuals are complex, society is much more complex and it is difficult to predict what they are going to do.

3.6 The Vagueness, Imprecision and Ambiguity of Words

Words are the materials with which the drafter works despite tremendous potential for vagueness, ambiguity, nonsense, imprecision, inaccuracy and indeed all the other horrors recognised by the legislative drafter.²⁷

An absorbing and continuing interest in linguistics (the scientific study of language) is a desirable, perhaps essential, quality for a drafter. A continuing interest because the science of linguistics is very far from standing still. It is surging with vigour.²⁸

Just the experience of each within a community will be different, so each person's language will differ to some extent. Communication between two persons requires an overlap of the field of linguistic experience of each.

The absolutely fundamental principle that words have no "proper" meaning and no "absolute" meaning is apt here. Words mean whatever they are said to mean by a majority of the members of the Appellate Committee dealing with the case, even though a minority may think otherwise.²⁹

Words meanings are not unadulterated and untarnished by the contact of words with one another. Words like people, however are gregarious and tend to influence and change the meaning of one another by the company they keep.

The absence of vocal aids and many kinds of visual aids is a serious handicap, but it is the

²⁷ Thornton, G.C., "Legislative Drafting" (Butterworths, London Dublin Edinburgh. 2019, 5th Edition).

²⁸ *Ibid*

²⁹ Carter V. Bradbeer (1975) 1 WLR 1204 at 1205

permanence and finality of written language, when compared with speech, that constitutes more serious hurdle to successful communication. The errors and ambiguities which in a speech are corrected and resolved immediately are in the case of written language much more difficult, sometimes impossible to correct and resolve.

A written law is the concern of four separate groups of people and should be comprehensible, or at least capable of explanation, to all of them. These are first, the individuals who comprise the legislature, second, the persons whose duty it is to administer the law; third, the members of that section of society which is to be regulated by the law; and fourth; the members of the judiciary who may have the final duty of interpreting the law. If the drafter and the members of all four groups are not members of the same speech community and do not share the same or substantially the same culture, the possibility of a failure of communication is real.

The effect of context on the meaning of a word may be compared with the effect of environment on the social conduct of a person. Stamp J. made the point that words derive colour from their context in *Bourne (Inspector of Taxes) v Crematorium Ltd* ³⁰ where he said:

English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put again into the sentence with the meaning which you would have assigned to them as separate words, so as to give the sentence or phrase a meaning which a sentence or phrase cannot bear without distortion of the English language.

This was repeated verbatim in *Sales Tax Officer, Central... v Byford Ltd*.³¹ In *Towne V. Eisner*³² Holmes J expressed much the same thought with a delightful metaphor: ‘A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in

³⁰ (1967) 2 All ER 576

³¹ 6 May 1982, 1984 55 Compas 204 delhi, ILR 1982 Delhi 181

³² 245 US 418 (1918) at 425

colour and content according to the circumstances and the time in which it is used.'

A distinction also exists between words considered independently and words used in association with other words in a particular context. In the first case there may be other words which approximate in meaning and these are the kinds of approximations to be found in dictionaries of synonyms.

However, when a word is used with other words, it becomes far less likely that another word of identical meaning exists. The word derives colour from its context and the exact shade it assumes is unlikely to be matched if another word is substituted. The absence of true synonymy is one of the results of the inexactness of language.

The language of yesterday is not that of today and will not be that of tomorrow. New words come into use, words change their meanings and words fall into disuse. There is certainly an impermanence about words and word meanings. Every age is of course different from those which preceded it. Its needs for communication are different and to meet those needs its system of symbols must change. Language does not change because it has life, but because those who use it have life and because their society is constantly changing. Semantic change and the coining of new words are the ways whereby language keeps up with social change and the passage of time. The English language absorbs, rejects, and adapts elements of vocabulary as it goes along.³³

3.7 Lack of Institutionalised Systematic Mechanism to Evaluate the Impact of Laws

Currently, Nigeria has no institutionalised systematic mechanism to evaluate the impacts of laws enacted by the legislature in the past to determine their effectiveness. Amendments to legislation are prompted by public outcry, government policy directions, the media in the performance of its agenda setting function, and occasionally on the recommendation of the judiciary in the course of performing its adjudicatory function. For instance, in *Udom v Umana*,³⁴ Hon. Justice Olabode Rhodes Vivour JSC considering the uphill task on the

³³ Robert Burchfield, *The English Language* (Oxford, 1955) P.113

³⁴(No1) (2016 12 NWLR (Pt,1526) P. 179

petitioner in an election petition to prove his petition, recommended the amendment of the Electoral Act, 2010 to shift the burden of proof to INEC to prove that it conducted a fair and reasonable election. Though the legislature is yet to heed to this recommendation but had heeded to similar judicial recommendation in other cases.

3.8 Socio-Political, Economical, Technological and Other Societal Changes.

Societal changes or interventions distort legislations by creating loopholes in the legislation and consequently incapacitate them from accomplishing the various philosophies behind them.

It is noteworthy to restate the statement of Dr. Tonye Jaja when he stated that every society or human community grows and in the course of that, the laws of the land follow the dynamic changes and attendant innovation and update.³⁵

Professor C.O Okonkwo, SAN supported the above view by stating that legislation will be much improved if it has a law reform background or input which brings with it a high level of thoroughness. Without this, some laws may begin to manifest defects and become liable to amendment soon after coming into force.³⁶

No legislation can effectively accommodate every unforeseen circumstance that might emerged in the future in spite of the professionalism that might have been infused into the drafting of the legislation to ensure its clarity, precision, and unambiguity. The meticulousness and the comprehensiveness with which the policy translated by the legislation was enunciated is notwithstanding. A legislation may be perfect, taking care of every essential element of effectiveness at the time of enactment, but gaps may be created in the legislation by intervening circumstances such as technological advancements and other societal changes subsequently. For instance, technological advancement has brought electronic voting to reality in advanced democracies such as the United States of America

³⁵ Jaja, T.C and Anyaegbunam, E.O (2020) Law Reform in Nigeria: A Historical perspective. *Journal of law and legal Reform*, 1(3) 437-444

³⁶ Okonkwo, C.O (2012). 'The Imperatives of Law reform in the Law-Making Process'. Unpublished Paper, Abuja, July 16-17, 2012

and others but Nigeria cannot avail herself of it because of the current state of the law regulating elections. The Electoral Act, 2010 does not contain relevant provisions for the deployment of electronic voting and transmission of the results for transparency.

In *Independent National Electoral Commission v Otti*,³⁷ the court held that until Section 49 of the Electoral Act is amended to bring in the process of electronic voting, the manual voters register will continue to play a prominent role in ascertaining whether there was over-voting or not by its production and comparing it to the number of those accredited to vote and those who actually voted. It is only then that the information captured in the smart card reader can be used to establish the actual number of persons who voted in the election.

Legislation depreciates in their deterrence capacity over the time. For instance, due to the inflationary trend in the country, some penal provisions are now ridiculous. The penalties are not commensurate with the gravity of the offences they are associated with. No legislation can perpetually remain effective for decades in spite of changes in the society in which the legislation operates.

These and many others constitute factors militating against effective legislation and they inform the need for the evaluation of legislation to determine the effectiveness or otherwise with a view to amending it where necessary to bring it in tune with current realities.

Routine evaluation of legislation would determine whether the legislation is producing expected outcomes, to what extent, and if not, why. This is the essence of Post-Legislative Scrutiny. It serves the purpose of always ensuring that legislation is effective to avert the consequences of ineffective or defective legislation which are debilitating and destructive. Below are some of the consequences of ineffective legislation.

4. Effects of Ineffective Legislation

Legislation which fails to achieve its targeted objectives by reason of poor drafting, poor implementation and whatever has adverse negative effect on the society in which it was

³⁷ (2016) LPELR-400056 (SC).

enacted to regulate. The following are some of the effects of legislation that is not effective.

4.1 Failure to Achieve National Development

Peace, order and good government are precursors to national development and where they are missing, the pursuit of national development will amount to wild goose chase. Legislation are not whimsically enacted in vacuum. They are at all times enacted for legal objectives or philosophies. Where the targeted objective of a piece of legislation is peace and order, but the legislation is not effective, the targeted peace and order will consequently be unrealistic and national development cannot be attained because development cannot thrive where there is no peace and order.

4.2 Unnecessary Litigation

It is not just the failure to achieve national economic development in Nigeria that is the only consequence and symptom of poor-quality legislation and Bills, resort to litigation to interpret the provisions of poor-quality Bills or legislation is a recurring decimal.

Poorly drafted statutes are a burden upon the entire state. Judges struggle to interpret and apply them, attorneys find it difficult to base any sure advice upon them, and the citizen with the earnest desire to conform is confused. Often, lack of artful drafting results in failure of the statute to achieve its desired result. At times, totally unforeseen results follow. On the other occasions, defects lead directly to litigation.

4.3 Waste of National Resources

Failure to undertake robust consultations during the legislative drafting process and the attendant wastage of national resources is evident in the cost of paying and re-paying legislative drafting staff and legislative drafting consultants to draft and re-redraft Bills. For example, the Petroleum Industry Act 2021 has at least five versions drafted by different teams³⁸ before it was eventually enacted.

³⁸ Jaja, T.C, 'Strategies for improvement of the Quality of Bills and Legislative Drafting in Nigeria' *Journal of Law Review*

Failure of the legislative drafters to undertake pre-legislative scrutiny and in-depth research of existing laws when drafting instructions are issued results in the loss of Federal Government revenue due to drafting of legislation that creates Federal Government Agencies (statutory corporations) that duplicate the functions of already existing federal government agencies.

Ideally, when a legislative drafter receives legislative drafting instructions to draft a Bill to establish a federal government agency, such a legislative drafter ought to conduct preliminary legal research to ensure that the existing laws of the Federation of Nigeria do not contain an existing government agency that is already performing the same or similar functions.

Another instance where poorly drafted legislation results in the wastage of government revenue is where President Muhammadu Buhari vetoed 34 Bills enacted by the National Assembly between 2015-2019 principally by reason of poor drafting by Legislative Counsel in the National Assembly.³⁹

4.4 Difficulty in Securing Conviction

Securing conviction under legislation that has gaps or loopholes becomes an impossibility because criminals will exploit such gaps or loopholes to circumvent the law. A pertinent instance is the nullification of the conviction of Orji Uzor Kalu's conviction by the Supreme Court. Senator Kalu was convicted of ₦7.65 billion fraud perpetrated when he was Abia State Governor between 1999 and 2007. He was convicted alongside his firm, Slok Nigeria Limited and the former Abia State Director of Finance, Ude Udeogu. The court ruled that Justice Mohammed Idris, who convicted Kalu, lacked the power to sentence him. The nullification came as a result of the unconstitutionality of the Administration of Criminal Justice Act, 2015 which had section 396(7) inconsistent with the Constitution of the Federal Republic of Nigeria. The Supreme Court allowed the appeal on the ground that section

³⁹ Terhemba Daka, 'Again, Buhari declines assent to Electoral Act' The Guardian Newspaper Nigeria, Abuja 8th December 2018.

396(7) of the Administration of Criminal Justice Act (ACJA) which allows an elevated High Court judge to go back to the court below to complete part-heard criminal matters is unconstitutional.⁴⁰

5. A Threat to the Hallowed Principle of Separation of Powers

Ineffective legislation undermines the principle of Separation of powers by giving the courts discretion to employ purposive approach to interpretation when there is ambiguity and imprecision in a legislation thereby causing uncertainty in the law. Though law-making is the statutory function of the legislature but judges do make laws sometimes by employing the golden rule or purposive approach of interpretation in place of the literal rule to fill in gaps in legislation. This creates room for the judiciary to encroach on the lawmaking function of the legislature.

Nigeria is in this pathetic state of development because some of the legislation regulating vital sectors of the economy are not effective. No country can develop more than the state of its laws therefore it is an imperative necessity for laws to be reviewed regularly. Legislation may have all the necessary ingredients of effectiveness at the time of enactment but may not remain effective as time goes on by reason of some of the militating factors mentioned above, most especially the socio-economic, political, technological and other societal changes. In other words, legislation cannot remain effective for eternity in the face of societal changes. It must change in the same pace with the society as the circumstances that might have prompted the enactment of the legislation may no longer be in existence in the future.

This position was given judicial nod in the case of *Buhari & Ors v Obasanjo & Ors*⁴¹ where the Supreme Court stated that the beauty of law in a civilized society is that it owes its respect and due observance to the society. It should be progressive and act as a catalyst to social engineering. Where it relies on mere technicality or outmoded or incomprehensible

⁴⁰ Mike Ozekhome, SAN, 'Respite for Senator Orji Uzor Kalu' allafrica.com/stories/202005190483.html accessed 23rd March, 2021

⁴¹ (2003) LPELR-813(SC)

procedures and immerses itself in a jacket of hotchpotch legalism that is not in tune with the times, it becomes anachronistic and it destroys or desecrate the temple of justice.

The regular review of law to know whether it is working to produce desired result or not is what is technically referred as “Post-Legislative Scrutiny” which is given considerable attention in the succeeding section.

5. Post Legislative Scrutiny

The concept of Post-Legislative Scrutiny is yet to be rooted in Nigeria even though it has been deeply rooted in advanced democracies such as the United Kingdom long ago where it is utilized as a parliamentary practice to guarantee the effectiveness of legislation. Because it has not been rooted in Nigeria, it is imperative to demystify the concept from the outset to achieve logical sequence in the discussion of the concept.

The prefix ‘Post’ simply means after. ‘legislative’ as an adjective is connected with the legislature and its power of making and passing laws, while “Scrutiny’ refers to careful and thorough examination. Putting the words together, the phrase “Post-Legislative Scrutiny” simply means a careful study or examination of a law after it has been implemented to determine whether it is effective in accomplishing the objectives or philosophies behind its enactment or not.

In its stricter sense, Post-Legislative Scrutiny looks at the enactment of the law, whether the legal provisions of the law have been brought into force, how courts have interpreted the law and how legal practitioners and citizens have used the law.⁴²

In a broader sense, Post-Legislative Scrutiny looks at the impact of legislation; whether the intended policy objectives of the law have been met and how effectively.⁴³

Post-Legislative Scrutiny can also be referred to as a broad legislative review, the purpose of which is to evaluate whether and to what extent a piece of legislation has achieved its

⁴² Franklin De Vrieze, ‘Principles of Post-Legislative Scrutiny by Parliaments’ (Westminster Foundation for Democracy 2018)

⁴³ *ibid*

intended purpose. It can also be referred to as a more focused evaluation of how a piece of legislation is working in practice.

Post-Legislative Scrutiny involves the legislature and it is usually conducted through its committees where a designated Committee scrutinise and evaluate the effects and consequences of a law after it has been implemented and may make recommendations for changes to the law or to how it operates in practice where necessary. It is appropriate to conduct Post-Legislative Scrutiny subsequent to implementation of the legislation because it is only after implementation that the effects and implications of a law can be assessed to determine whether it has met its objectives, whether it has worked well in practice or it has unintended consequences.

Post-Legislative Scrutiny therefore provides a way for parliament to evaluate the impact and effects of laws. It also enables legislators to listen to the views and experiences of those affected by the law and to be responsible to their concerns.

To take charge of this responsibility, legislature can establish specialized committees and conduct their own analysis and/or they can rely on the information and reports provided by the government, civil society organisations (CSO), media and even individuals.

5.1 The Significance of Post-Legislative Scrutiny

It is widely accepted that Post-Legislative Scrutiny can have a number of benefits for existing legislation and future law-making. It is trite to observe that consideration of how legislation works in practice may reveal that what was anticipated is not what has resulted. Thus, the headline reasons for systematic Post-Legislative Scrutiny have been identified as follows:

- (a) it serves as instrument to assess whether legislation is working out in practice as envisage and, if not, to determine the reasons why and to offer solutions to rectify any problems. Post-Legislative Scrutiny is to establish whether the objectives which the legislation was designed to address have been achieved, to what extent has the objectives been achieved.
- (b) The law Commission suggests that Post-Legislative Scrutiny should lead to better legislation due to the increased focus upon how Acts and subsequent regulations operate.

Where the evaluation reveals any gap or loophole in the legislation that impedes regulation of the anticipated situation, amendment will be recommended and possibly made to cover such loophole or gap in the legislation for better regulation. Where it is discovered that other legislation poses problem to the effectiveness of the legislation under review, such legislation would be recommended for amendment to ensure smooth correction of the targeted mischief.

3. Post-Legislative Scrutiny improves focus on implementation of policy aims. With the knowledge that Post-Legislative Scrutiny might one day be undertaken, it might concentrate the government's mind on the task of implementing legislation and its likely effects. If in the course of the Post-Legislative Scrutiny, it is discovered that it is the implementation agency that need overhauling, such will be recommended and carry out.

4. It improves the delivery of policy aims, in the sense that it provides a spur to those who work in the delivery of policy in ensuring that policy aims are met.

5. It creates room for the location of good practice and disseminate it in order to help both the executive and legislature learn how to avoid creating legislation with unintended consequences. Lessons drawn from the success of legislation or failures of legislation revealed by the scrutiny may be avoided. It is important to note that Post-Legislative Scrutiny should not be exclusively about identifying problems with legislation or showing that its objectives have not been met. On some occasions, the law may be working well and Post-Legislative Scrutiny can be useful in highlighting models of good policy and practices so that future legislation can learn the lessons of a successful approach.

6. It leads to improvement in the quality of legislation in the sense that with the knowledge that legislation could be formally reviewed, it might have the effect of improving the drafting and scrutiny of legislation⁴⁴.

7. Post-Legislative Scrutiny could well reveal that there is no law on a given subject that the existing law is outmoded and incapable of dealing with the subject matter in contemporary

⁴⁴ Law-Commission (UK) Post-Legislative Scrutiny (No. 302, 2006) at 2.24

times. Where this is the case, appropriate legislative intervention will be recommended to provide adequate and robust legal framework for regulating the respect of human activity being concerned.

8. Post-legislative Scrutiny could also pinpoint that there are adequate laws on a subject-matter but that enforcement or implementation is the challenge. Where this is the case, law review could recommend appropriate policy actions or responses targeted at closing the deficit in implementation.⁴⁵

(9) Post legislative scrutiny exposes ambiguities, inconsistencies, practical impracticalities as well as lacuna in the law in order to bring about the needed reform for the good of society. It therefore follows that Post-Legislative Scrutiny serves to bring about reforms in the law by highlighting the gap between the legal ideals and the practical realities.

The importance of Post-Legislative Scrutiny cannot be over-emphasized. It is arguable that without systematic Post-Legislative Scrutiny, the true efficacy of a legislative response may be largely unknown. Amendments or law reform may take place without careful examination of the success (or lack of success) of the existing response to the problem, and routine maintenance of the stock of legislation may not occur on a regular basis, notwithstanding the changing social and economic landscape.

No matter how best a law is drafted years ago, it cannot adequately and comprehensively take care of every unforeseen circumstance that might crop up subsequently. The laws must change in direct proportion with societal changes to maintain social equilibrium. Our laws are not always perfect and final, and cannot be so in a dynamic society; they are not always even intelligible, and if intelligible, not always intelligently made.⁴⁶ They may contain internal contradictions or inconsistencies or outright ambiguities. The social conditions that were in force which necessitated the enactment of the law may have changed. There might be duplication of pronouncements on a legal provision as to make the law uncertain. There

⁴⁵ Law-Commission (UK) Post-Legislative Scrutiny (No.302, 2006) at 2.24

⁴⁶ B A Worthy, Some Reflections on Legal Research after Thirty Years (1982) (24) Journal of Indian Law Institute; 176

may be a wide gulf between legal idealism as posited in the statute and the practical reality. All these are reasons for regular review or evaluation to bring about improvement in our law-making, implementation and interpretation.

For these reasons and more, legislatures should follow-up afterwards to make sure that the law is fully implemented and that it is achieving the results that were originally intended. This final stage of the end-to-end legislative process is what Post-Legislative Scrutiny is all about.

5.2 Methodology of Post-Legislative Scrutiny

There is no fixed or agreed method that should be followed to carry out Post-Legislative Scrutiny. How scrutiny is conducted will be influenced by the agency leading the review, the nature of the legislation, the scope of the review, and the available resources. Meaningful scrutiny does, however require collation and analysis of relevant information together with the involvement of relevant stakeholders comprising those affected by the legislation, the agencies charged with the responsibility of implementing them. Given the wide array of agencies involved in Post-Legislative Scrutiny, there is no one source of reliable information about how scrutiny is carried out. However, the approach adopted by the Law Commission is instructive. In particular, the Commission has developed a range of review techniques, including appointing committees, consultants and working groups; utilizing the research skills of university academics; holding public seminars and debates; producing discussion papers for input from interested parties. While not all legislation will justify this degree of scrutiny, these methods are illustrative of the tools that can be employed to assess how legislation has worked in practice.

The methods used and outcomes of Post-Legislative Scrutiny are similar to those used by Committees in oversight or policy inquiries. The Standing Committee which covers the relevant policy area will most often undertake the Post-Legislative Scrutiny inquiry and will follow the normal procedures for a Committee inquiry for example the collection of information and views about the law (written and in oral evidence sessions), analysis of the information received, followed by Committee deliberations, the publication of a report and,

if appropriate, recommendation for amendment of the law or proposal to reform how it works in practice.

As part of the Post-Legislative Scrutiny, it might be useful to organize a public hearing to seek opinions, suggestions and recommendations from the experts, stakeholders or representations of the public about the extent to which legislation has been implemented and its objectives achieved.

It may be sensible to pilot different methods of Post-Legislative Scrutiny to evaluate which ones have proved most effective before deciding on the best form of Post-Legislative Scrutiny to be adopted as the standard model.

5.4 When to Conduct Post-Legislative Scrutiny

Following the definitions of Effective Legislation and the factors militating against effective legislation earlier discussed in this study, it is the researcher's view that the effectiveness or otherwise of legislation can only be determined after implementation. In other words, whether the objectives of the legislation have been achieved or not can only be determined after when the legislation has been implemented. The objectives of legislation are the parameters with which to determine the effectiveness of legislation.

A professionally drafted legislation may not be effective if the objectives of the legislation are not achieved or if the targeted mischiefs are not corrected upon implementation. Clarity, precision, unambiguity and efficiency are only some of the ingredients of effective legislation and not the only determinants of effective legislation. Legislation must successfully produce the desired result to be effective.

Some legislation may be well-drafted in terms of textual and structural designs in addition to being drafted in the simplest and best language with all necessary grammatical and punctuation rules observed but are not effective to the extent that their objectives are not achieved on implementation. Legislation must provide processes likely to ensure effective implementation. A law works only when it induces the behaviour it prescribes. Whatever its propositions, good intentions, if a law fails to improve existing problematic behaviours,

how can one call it good?⁴⁷

Based on the above, Post-Legislative Scrutiny can be conducted anytime subsequent to the enactment and implementation of the legislation concerned. In the United Kingdom, Post-Legislative Scrutiny usually takes place three to five years after when the law has been passed,⁴⁸ although if there are obvious and pressing issues arising from a law's implementation, Post-Legislative Scrutiny may be undertaken more quickly. For instance, The Police Act, 2020 which is barely a year old is currently receiving legislative attention in the National Assembly because of the current security challenges facing the country. The Bill is seeking to decentralize the Police Force to adequately tackle the security challenges facing the country. It is not necessary to wait for a particular number of years before Post-Legislative Scrutiny is conducted. When to conduct Post-Legislative Scrutiny Should be determined by the prevailing circumstances. President Muhammadu Buhari has written the National Assembly of Nigeria seeking amendment to the Petroleum Industry Act, 2021 which is barely one month old following the out-cry that greeted the Act.

It is important to note that there are advantages and disadvantages of reviewing legislation earlier and later following enactment. For example, if reviewed too early a committee may miss problems which are yet to develop as the legislation has not been on the statute books long enough. There is also the chance that early review might deter another committee or a successor committee from reviewing it again, so as not to cause an overlap. However, there are disadvantages of reviewing legislation after it has been on the statute books for a longer length of time. For example, if an Act has been underperforming its aims for seven years before it is repealed, that is 7 years when a review could have taken place and a solution sought, the effect will have been destructive. This is why there must be flexibility within the system in order to deal with such challenges and why Committees should be able to undertake Post-Legislative Scrutiny without a memorandum from the government.

⁴⁷ Ann Seidman & Others, 'Assessing Legislation: A Manual for Legislators' (A Publication of National Institute for Legislative Studies (NILS), National Assembly, Abuja.

⁴⁸ Franklin De Vrieze, 'Principles of Post-Legislative Scrutiny by Parliaments' (Westminster Foundation for Democracy 2018)

5.5 Historical Development of the Concept of Post-Legislative Scrutiny.

There have been several attempts in history to ensure that legislation as a means of building and managing society is effective in terms of clarity, precision, unambiguity, compliance, accessibility, and implementation to achieve desired results.

The quest for effective legislation has been an aged-long venture where several studies have been conducted which have resulted in several interventions over the years for the purpose of making legislation effective. Some of these interventions include arrangement and structuring of legislation, regulatory or legal framework for drafters, provision of drafting manual, writing in plain language, gender-neutral drafting, issuance of standard and detailed instructions by sponsoring ministries, drafting by professionals, training of drafters, sponsorship of drafters to both National and International Seminars and Conferences organized by professional bodies and provision of well-equipped drafting office and others.

For instance, George Coode took a major revision of the poor laws, which led to *On legislative Expression* (1845 & 1852).⁴⁹ Sound groundwork was provided by Coode. As a result of his efforts, theoretical underpinnings to drafting practice were provided for the first time. In particular, he formulated a framework for composing legislative sentences, asserting that each should contain standard components and showing how they should be consistently deployed. Coode made many suggestions designed to produce more reliable drafting practices. They include:

- (a) The prime virtues in drafting are simplicity and directness of expression. Common patterns of English should always be used;
- (b) Sentences should follow each other in a logical sequence, for example, in accordance with the chronological order of the events to which they relate.
- (c) Separate legal sentences should be used to provide for different rules relating to different persons or different events and there should be one sentence for each class of case, in

⁴⁹ This was reprinted in E.A Driedger; the Composition of Legislation, 1976).

which a distinct person is subjected to a distinct legal provision;

(d) If a legal person is engaged in several actions in the same set of circumstances, the series of actions should be gathered in a single sentence, in the order in which they will occur;

(e) Artificial or arbitral definitions of terms should be avoided. Instead of providing certainty of meaning they can conceal important effects;

(f) Definitions should challenge attention by being placed before, not after, the matter to which they relate; defined terms should be identified by some distinguishing mark;

(g) Provisos should be avoided; their only legitimate use is to create an immediate exception to a general proposition.

Sir Henry Thring wrote *Practical Legislation* 1877, 1902. He pioneered a number of practices that complement Coode's proposals. These included:

(a) Legislative sentences should be short, with only one sentence to a section (or, if the section is divided into subsections, to each subsection); this was facilitated by the statutory permission in 1850 to use sections and subsections.

(b) There should be a unity of purpose between the subsections of the same section; the main proposition in a section should be contained in the first subsection; qualifications and exceptions should be contained in subsequent subsections.

(c) Lengthy Acts should be divided into parts and headings ascribed;

(d) Distinct matters, which have no connection with each other, should not be dealt with in the same Act;

(e) The simplest expressions found in ordinary composition will generally be adequate;

(f) Latin terms and unnecessary technical expressions should be avoided;

(g) The same term should be used to describe the same thing; a different term should be used to describe a different thing.

George Coode, Henry Thrings and others made significant contributions to improve the approach to common law drafting in the later nineteenth and the early twentieth centuries. Their writings and legislative drafts had considerable influence throughout the then British Empire.⁵⁰

However, all these interventions have not produced the desired result of effective legislation where legislation is drafted with clarity, precision and unambiguity with efficiency towards the achievement of the objectives or philosophies of the legislations once and for all.

Legislation may have all the necessary ingredients for effectiveness as stated above but may not be effective in perpetuity in the face of societal changes. Effectiveness of legislation is transient and relative in the sense that an effective legislation today may not be effective tomorrow by being clear, precise, unambiguous and capable of achieving the legal objectives of the legislation despite the meticulousness and professionalism observed at the time of drafting. Societal changes and other factors militating against effective legislation will invariably create gaps or loopholes to make the legislation ineffective.

Realizing that legislation cannot remain effective for eternity in the face of societal changes without any form of reform to attune it with current realities, parliaments all over the world resorted to the utilization of the concept of Post-Legislative Scrutiny for the purpose of constantly updating their legislation for effectiveness. For instance, the concept of Post Legislative Scrutiny has existed and taken root in advance democracies such as the United Kingdom for over fifteen years.⁵¹ The utilization of the concept to determine the effectiveness of legislation is now a routine practice in the British Parliament.⁵²

Furthermore, in Switzerland, the Constitution establishes a direct obligation for the parliament to evaluate the effectiveness of the legislation and other measures adopted. The Federal Parliament set up in 1991 the Parliamentary Control of the Administration (PCA),

⁵⁰ *Ibid* n 87

⁵¹ Franklin De Vrieze, 'Principles of Post-Legislative Scrutiny' (WFD, London 2017) p.15

⁵² Frank De Vrieze and Victoria Hasson, 'Post-Legislative Scrutiny': *Comparative Study of Practices of Post Legislative Scrutiny in Selected Parliaments and Rationale For its in Democracy Assistance*. (London, 2017) P7

a specialized service which carries out evaluations on behalf of the Parliament. The PCA works based on mandates on behalf of Parliamentary Committees.

In South Africa, the parliament has commissioned an external panel of senior experts to conduct a systematic examination of the effects of laws passed by the National Assembly since non-racialized majority-rule was established in 1994. The process that is being followed in South Africa offers a useful comparative guide for other parliaments that can identify a similar check-point in time around which to examine the impact of passed legislation.⁵³ It is also a useful comparator for those parliaments who do not have the internal capacity to engage in such an extensive review, but in which there exists sufficient funding to employ the use of experts to evaluate a parliament's legislative output in a specified area. The case of South Africa also demonstrates that building public awareness and public participation can lend authority to, and fortify, the strength and merit of the exercise of Post-Legislative review.⁵⁴

In Ghana, the Fines (Penalty Units) Act, 2000⁵⁵ automatically upgrades fines and penalties in direct proportion with the prevailing minimum wage in the country. Fines and penalties are classified into units by the Fines (Penalty units) Act where fines and penalties vary in direct proportion with the inflationary trend in the country. The country operates an Act with calibrated fines and penalties with the nature and gravity of offence proportionally with the rate of inflation in the country. This is to the effect that legislation do not ordinarily become moribund or ineffective merely by reason of the penalties or fines lacking deterrent effect as a result of inflation.

6. Legal and Institutional Framework for Post-Legislative Scrutiny in Nigeria

The legal framework for the conduct of Post-Legislative Scrutiny in Nigeria is the Constitution of the Federal Republic of Nigeria.⁵⁶ The Constitution vests the legislative powers of the Federation in the National Assembly which comprises the Senate and the

⁵³ Ibid P9

⁵⁴ Ibid (n 105)

⁵⁵ Act 572

⁵⁶ CFRN, 1999 (as altered) s 4(2)

House of Representatives.⁵⁷

The lawmaking power of the legislature as vested by the Constitution includes the power to amend and revoke the laws enacted by it. In the case of *Adesanya V Adewole*,⁵⁸ Tobi JSC held that the constitutional function of the legislature to make laws includes amendment and revocation and the duty of the judiciary is to interpret the amendment or revocation to achieve the intention of the legislature.

Unlike the courts that become *functus officio* after the delivery of a judgment except the correction of clerical mistakes or accidental slips,⁵⁹ the legislature has a constitutional duty to correct defects in legislation made by itself when the circumstance demands. The legislative power of the National Assembly to make laws is 'end-to-end'. The legislature can enact, evaluate and amend or revoke and re-enact where necessary to keep the legislation alive for effectiveness. By section 88(2) of the Constitution of the Federal Republic of Nigeria, the National Assembly can monitor the implementation of legislation and evaluate or assess it to determine the effectiveness of the legislation. The power to monitor the implementation and evaluation of legislation is known as the oversight powers of the National Assembly. The provision is to the effect that the powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to- (a) make laws with respect to any matter within its legislative competence and **correct any defects in existing laws...**⁶⁰. By this provision, the National Assembly is empowered

to subject any legislation enacted by itself to Post-Legislative Scrutiny to determine whether the legislation is yielding expected result or not, and where necessary carry out amendment or any other form of law reform to update the law in tune with current socio-economic, political, technological and other societal demands.

The National Assembly has pursuant to the constitutional provision cited above and others

⁵⁷ *Ibid* s 4(1)

⁵⁸ (2006) LPELR-143(SC).

⁵⁹ *Citec int'l Estate Ltd & ors v Francis & Ors* (2014) LPELR-22314 (SC).

⁶⁰ *Ibid* 2(a) (**emphasis mine**)

amended several legislation following policy direction of the government in power, media, pressure by Civil Society Organisations (CSO), Labour Organisations, recommendation by the judiciary, and even individuals. However, the performance of the National Assembly in direction of periodic review and evaluation of extant legislation has not satisfactory considering the spent, outdated and anachronistic legislation in our labour books.

The Nigerian Law Reform Commission which is an executive body established to complement the efforts of the National Assembly in the progressive development and update of legislation by way of codification, elimination of anomalous or obsolete laws and general simplification of the law in accordance with general directions issued by the government from time to time has also not been helpful in the discharge of its saddled responsibility.⁶¹

The Nigerian legal system has remained inundated with all manner of outdated, obsolete and anachronistic laws. Some legislation in Nigeria are as old as the country begging for legislative attention for reformation in accordance with societal demands to become effective. Some English laws received into Nigeria during the colonial era are still in force in Nigeria even though most of them have been repealed in England where they originated.

6. Challenges of the National Assembly with Respect to Post-Legislative Scrutiny

The National Assembly is enmeshed in the following challenges:

(a) Sponsoring of Bill for Showmanship

Nigerian legislators have the penchant or propensity for sponsoring new Bills to create a record of having sponsored a Bill. They are indifferent to the functionality of the laws. More often than not, they pass laws and take no further responsibility to evaluate the impact of the laws on the society. The focus is often on getting legislation made and not on checking how well it is being implemented and if it is being implemented at all. Sylvester Imanobe supported the above view by asserting that over 50% of the Bills received at the National

⁶¹ Section 5 Nigerian Law Reform Commission Act, 1979.

Assembly are poor quality Bills that emanate not out of the desire to promote national economic development but instead are “submitted by the desire of legislators to be listed as having sponsored Bills.”⁶²

This is in contradiction with the modern practice of Post-Legislative Scrutiny in advanced countries where legislation is regularly evaluated to assess the effectiveness or otherwise with a view to amending, repealing or consolidating with other legislation to update it.

(b) Preoccupation with Oversight Function

The legislature is often preoccupied with the application of the oversight power as a political weapon to score political point because of its political implications for them as politicians.⁶³

Legislative oversight is one of the major ways through which the legislators take their own pounds of flesh whenever they have a score to settle with the executive. A recent case is the threat by the Senate that the National Assembly would not hesitate to invoke its legislative powers to deal with the executive if it continued to harass and intimidate the lawmakers through the security agencies.⁶⁴ Furthermore, the legislative oversight is a lucrative avenue through which the legislators corruptly enrich themselves. This is because the legislators often hide under their oversight function to extort money from various government agencies and functionaries appearing before them. Thus, the erstwhile Director-general of the Securities and Exchange Commission (SEC), Ms. Arumah Oteh, once accused the then Chairman of the House of Representatives Committee on Capital Market and Institutions, Mr. Herman Hembe, of demanding all manner of money from the SEC including a whopping sum of N39 million to organize a public hearing on capital market, and another N5 million to ensure that SEC was giving a clean bill of health by the

⁶² “Principles of Legal and Legislative Drafting in Nigeria” (Abuja: Imhanobe Law Books Limited, 2014) P. 239

⁶³ E J Tom and A J Attai, ‘The Legislature and National Development: The Nigerian Experience’, (2014) 2 (9) *Global Journal of Arts and humanities and Social Sciences* 63-78 at 66

⁶⁴ H Umaro, ‘Harassment, intimidation of lawmakers: Senate to Invoke Legislative Powers to Deal with Further Acts’, Vanguard (Lagos 5 may, 2017) available at < <http://www.vanguardngr.com/2017/harassment-intimidation-lawmaker-senate-invoke-legislative-powers-deal-acts/> > (last accessed 22 August 2020).

Committee.⁶⁵

Also, Senator Godswill Akpabio, the current Minister of Niger-Delta made shocking revelation to the effect that virtually all contracts awarded by the Niger-Delta Commission went to members of the Nigerian National Assembly. Though he later made a retraction that never exonerated them completely.

Most recently, A High Court in Abuja has sentenced the former Chairman of the House of Representatives Ad-hoc Committee on Petroleum Subsidy, Farouk Lawal to seven years in prison. Lawan was found guilty of charges bordering on corruption. It was established that he asked for and obtained a bribe from Femi Otedola, in order to exonerate Zenon Petroleum and gas Limited from the list of companies in the fuel subsidy scam.⁶⁶

The National Assembly misapplies its oversight powers to score political points to the apparent neglect of monitoring and evaluation of laws for reform to conform with current realities.

(c)The Overbearing Influence of the Executive

The Constitution of the Federal Republic of Nigeria is structured in a way that the Executive organ of government is placed in an advantageous position in the power equation among the three organs of government. The President of the Federal Republic of Nigeria is the Commander in-Chief of the Nigerian Armed Forces. He gives directive as it pleases him. The invasion of the National Assembly premises against all democratic norms in 2015 by armed men of the Nigeria Police Force and the replay of this in 2018⁶⁷ by the Department of State Security Services (DSS) with impunity are some of the instances of display of the overbearing influence of the Executive against the legislature. The vantage position of the Executive⁶⁸ and the huge resources at the disposal of the organ is a challenge to the law-

⁶⁵ F J Nwagwu, 'legislative Oversight in Nigeria: a Watchdog or Hunting Dog'? (2014) 22 Journal of law, policy and Globalization 16-24 at 19

⁶⁶ Oludare Richards and Ameh Ochojila, Farouk Lawan Jailed 19yrs for \$500,000 bribe' The Guardian Newspaper, (Abuja 23rd June, 2021) P1.

⁶⁷ Anthony Ogbonna, 'Order from Above Authorised DSS' invasion of National Assembly <<https://www.vanguardngr.com>> accessed 23rd June, 2021

⁶⁸ The President is The Commander-in-Chief of the Armed Forces Ruling Council

making powers of the Legislature.

(d) The Veto Power of the President.

The veto power vested in the President by the Constitution constitutes a great challenge to the National Assembly with respect to its lawmaking powers. The power is sometimes exercised in an unpatriotic manner to arrest people oriented and well-intended legislation of the National Assembly. A case that readily comes to mind is the serial arrest of the Electoral Act Amendment Bill by Mr. President in exercise of this veto power. Before the last version was submitted in 2018, he had withheld assent to the document about three times, attributing the decision to “errors” in the amended Bill.⁶⁹

Though, the Constitution gives the National Assembly the power to override the exercise of such veto power by repassing the Bill, but in most cases the National Assembly couldnot galvanize support to utilize this constitutional weapon to defeat the withhold of assent by Mr. President. Section 58(5) of the Constitution⁷⁰ requires the National Assembly to re- pass the Bill. In the case of *National Assembly v President FRN & Ors*⁷¹ the Court of Appeal held that a mere “Motion of Veto Override” is not enough.

The National Assembly has only succeeded in overriding the Veto Power of Mr. President by re-enacting the Bill by two-thirds majority. These are (1) The Niger-Delta Development Commission (Establishment) Act (2) Electoral Act, 2002, and (3) Corrupt Practices & Other Related Offences Act, 2003.

The President has arrested unreasonably huge number of legislation in the Nigerian constitutionally democracy. For instance, both chambers of the National Assembly successfully passed 1005 Bills between the period of June 1999-May 2015 but only 244 Bills became Acts of the National Assembly by virtue of receiving Presidential Assent.⁷² Meanwhile, the 8th National Assembly passed a total of 287 Bills between 2015 and May

⁶⁹ The Guardian Newspaper, (Abuja 23rd June, 2021)

⁷⁰ Constitution of the Federal Republic of Nigeria, 1999 (as altered)

⁷¹ (2003) LPELR-10151 (CA)

⁷² 20 Years of Law Making in the National Assembly 2015-2019: “Analysis of Bills Processed” National Institute for Legislative and Democratic Studies National Assembly, Abuja. P 72

2019 with President Buhari, ignoring not fewer than 160 of them.⁷³ From 2019 to date, 48 Bills have been passed by the National Assembly with President Buhari assenting to only 5 of them, ignoring a whopping 43⁷⁴. With these statistics, it is safe to presume that the President may withhold assent on a Bill that attempts to whittle down his overwhelming influence. The refusal of Mr. President to sign the Electoral Act amendment Bill into law is believed to be one of such instances.

(e) Corruption

Corruption as a pandemic affects the National Assembly in its law-making Process. Proposed Bills are sometimes arrested by bribing National Assembly members while in other times money is used to facilitate the passage of a Bill that protect some powerful interests against general interest. Nigeria's Senate President, Ahmad Lawan and the Speaker of the House of Representatives, Femi Gbajabiamila were allegedly paid dollars (millions of naira) to ensure the passage of the controversial Petroleum Industry Bill (PIB) recently signed into law by President Muhammadu Buhari.⁷⁵

(f) Ethnic Politics

Every proposed Bill in the National Assembly is greeted with suspicion. Until a Bill is proven to be innocuous to the major sections of the country, it will suffer a setback by reason of ethnic politics by members of the National Assembly. National Assembly members firstly hold their allegiance to their various ethnic groups before the country in contradiction to the oath of allegiance they took at the beginning of the tenure. They tend to serve their ethnic interests first before the national interest. They are not nationalistic enough to subsume their interests under national interest. A proposed amendment to an existing legislation to cater for the interest of minority groups in the country may not scale through legislative process by reason of opposition from members from major ethnic groups.

⁷³ Sunday Aborisade, "Buhari fails to Sign over 200 Bills Passed in Six years The Punch Newspaper 30th May, 2021

⁷⁴ Supra

⁷⁵ Saharareporters.com 20th August, 2021

For the above reasons and others, the performance of the National Assembly in the direction of Post-legislative Scrutiny has not been satisfactory.

The Nigerian Law Reform Commission as an executive body established for the progressive update and development of the law is also enmeshed in dormancy. The Commission is moribund and dysfunctional therefore lacks the capacity to engage in progressive development or reformation of spent or moribund laws to synchronise them with current realities by reason of the various challenges facing it. The Commission is dormant to the extent that there are in existence obsolete penalty clauses in our law books begging for review. The extant law regulating the activities of the Commission is more of stumbling block against reform of obsolete law.⁷⁶ Another challenge of the Commission is underfunding. The annual budgetary allocation to the Commission is insufficient to carry out its saddled responsibility effectively and efficiently.

7. The Practice of Post-Legislative Scrutiny in Nigeria

With the National Assembly and the Nigerian Law Reform commission encumbered with challenges mentioned above, Nigeria currently does not practice Post-Legislative Scrutiny in its real sense to regularly synchronize the laws to current realities so as to make them effective for the actualization of their targeted legal objectives or philosophies.

The strong but humble view of the researcher is fortified by the conspicuous absence of review or sunset clauses in Nigerian legislation as revealed by critical examination of the legislation contained in the Laws of the Federation (LFN) 2004 and those enacted after the publication of the laws of the federation 2004 to date. Furthermore, there are no ministerial undertakings where ministers are required to submit Memorandum of Implementation at a stipulated date subsequent to implementation of the legislation except in the case of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007 where NEITI is requested to submit an Annual Report to the National Assembly. These triggers if present

⁷⁶ Senator Basiru, 'Obsolete Laws: Senate to Fast Track Passage of Nigeria Law Reform Bill' www.bentelevision.com/obsolete-laws-senate-to-fast-track-passage-of-nigerian-law-reform-bill/ (last accessed 25/06/2021)

in legislation automatically prompt Post-Legislative Scrutiny without any foot-dragging by either the legislature or the executive organ of government.

Another compelling evidence with respect to the non-practice of Post-Legislative Scrutiny is the absence of a Standing Committee both in the Senate and the House of Representatives to conduct Post-Legislative Scrutiny on deserving existing legislation for necessary reformatory action as against the parliamentary practice in advanced democracies such as the United Kingdom, Switzerland, South Africa and others where Post-Legislative Scrutiny is practiced is a reinforcing or substantiating evidence to the non-practice of Post-Legislative Scrutiny in Nigeria. Currently, the Senate has 70 Committees while the House of Representatives has 90 Committees⁷⁷ with none of the Committees in both Houses designated and detailed to conduct Post-Legislative Scrutiny on deserving legislation to determine their effectiveness or otherwise and also to serve as a gateway to determine the necessity of proposed Bills. In serving as a gateway, the Committee will conduct Bill analysis and scrutiny to bring to the fore whether there is an already existing legislation on the area intended to be covered by the proposed Bill in which case the Committee would recommend amendment, repeal and re-enactment of the existing legislation to accommodate areas not covered by the extant legislation that are in the proposed Bill to update it and consequently make the enactment of the proposed Bill needless. By so doing, the Committee would have succeeded in streamlining and reducing the number of duplicating legislation churned out by every successive Assembly. Presently, amendments and other alterations to legislation for reform are driven by executive policy directions, recommendations of the judiciary, demands by Civil Society Organizations (CSO), the media, and private individuals to protect certain interests.

The absence of the triggers of Post-Legislative Scrutiny as highlighted above contributes to the unsatisfactory performance in the proactive and prompt update or reform of laws by means of amendment, repeal, codification and consolidation. This has led to the resultant

⁷⁷ Jake Dan-Azumi and Terfa Gbahabo '20 Years of Law-Making 2015-2019 National Assembly: An Analysis of Bills Proposed'. A publication of National Institute for legislative and Democratic Studies, National Assembly, Abuja

effect of leaving unreasonable number of outdated, obsolete and moribund laws in our law books begging for appropriate legislative attention. Some of the laws have lost their deterrent or regulatory tendencies (the normative value) with the resultant effect of infertility or failing to produce targeted objectives.

English laws received into Nigeria during the colonial era are still in force in Nigeria even though most of them have been repealed in England where they originated.⁷⁸ Also, some of the laws in force in Nigeria today are mere decrees and edicts promulgated through fiat in the heydays of military rule. Even though these decrees and edicts were legitimized at the dawn of the Fourth Republic by virtue of the saving clause of the 1999 Constitution of the Federal Republic of Nigeria, (as altered)⁷⁹, which itself is a decree, their contents and characters have remained unchanged. Thus, one of the major challenges confronting Nigeria's nascent democracy is the reality of running a democratic government with these glorified decrees and edicts. No country can develop more than its laws. There is necessity for regular evaluation of extant legislation to determine their effectiveness as legislation cannot be effective in terms of achieving targeted objectives or remedying targeted mischiefs till eternity or in perpetuity in the face of technological advancements and other societal changes. Societal changes or interventions distort legislation by creating loopholes in the legislation and consequently incapacitate them from accomplishing the various philosophies behind them.

There is a plethora of legislation that are due for review for possible reform as they have failed to accomplished their targeted objectives because of gaps or loopholes occasioned by omissions, technological advancements, occurrence of circumstances that were not envisaged at the time of drafting, poor policy formulation, inelegant drafting, non-observance of proven best drafting practices, theories and conventions, and other societal changes.

⁷⁸ Opinion, 'Nigeria: "Reforming Our Laws a problem, Implementation a Greater Challenge', *This Day* (Lagos, 14 July 2015) available at <http://allafrica.com/stories/2015071409.html> (last accessed 17 March 2021).

⁷⁹ Constitution of the Federal republic of Nigeria (promulgation) Act, Cap.C23 LFN 2004, as amended, S.315.

This is not however the situation in other advanced jurisdiction where the mechanism of Post-Legislative Scrutiny is employed regularly to determine the effectiveness and otherwise of necessary laws in addressing their targeted objectives or philosophies.

To mention but few, the following are some Nigerian legislation which are in the opinion of the researcher due for Post-Legislative Scrutiny for necessary legislative action for the achievement of their targeted objectives.

(a) The Electoral Act⁸⁰

The Electoral Act 2010 which is the principal law regulating our electoral process has failed to take us to the desired destination of free, fair, and credible and transparent elections where every vote would count and the result will reflect the wish of the people.

Nigerian elections are fraught with irregularities and malpractices creating room for multiplicity of litigation and consequently putting more burdens on the judiciary immediately after elections. Several means including vote buying have been devised by smart politicians to circumvent relevant provisions of the law to perpetuate electoral fraud. Peter Ogban, a Professor of soil science has just been sentenced to 3 years imprisonment by Akwa Ibom State High Court for manipulation of election results.⁸¹

The 2019 General elections in Nigeria was held on a faulty foundation. One would have expected the President to have signed the Electoral Act (Amendment) Bill 2018 into law so as to afford the Independent National Electoral Commission adequate tools with which to conduct a free, fair and credible election and thereby prove to the world that Nigeria is serious about democratization. However, this was not done and so the violence, thuggery, vote buying and other forms of malpractices that characterized the elections across the state were expected.⁸²

⁸⁰ 2010 (As amended)

⁸¹ The Guardian Newspaper 4th May, 2021 "Conviction of Prof. Peter Ogbain: Deterrence or Incentive for Electoral Offences

⁸² D. Chukwumerije, Advancing Nigeria's Democracy Beyond Ideas' (2019) (1)(2) University of Ife Law Journal 514

A case that readily comes to mind in proof of the imperfection of the electoral system is the last gubernatorial election in Imo State where the candidate of the People's Democratic Party, Emeka Ihedioha was declared winner of the election. The victory was however overturned by the Supreme Court and the candidate of the All progressive Congress, Uzodinma who took fourth position in the election was declared the winner of the said election.⁸³ More worrisome is the fact that Hope Uzodinma earlier contended that the election was invalid by reason of non-compliance with the provisions of the Electoral Act 2010 (as amended) whereupon he prayed that a supplementary election be held in the 388 disputed polling units where he claimed his votes were cancelled. Ridiculously, the votes upon which Uzodinma was declared as the winner of the election were 129,340 in excess of the number of voters accredited for the election. This convincingly points to the imperfections in our electoral system.

The Electoral Act is bereft of provisions accommodating recent technological innovations that permit electronic voting during elections and transmission of the results electronically. Until the Act is amended and provisions are made to allow for electronic voting and transmission of result is captured, credible elections will continue to elude us.

(b) The Act Authentication Act, 1962

Furthermore, the Act Authentication Act 1962 is no longer detailed and comprehensive enough to deal with concepts like 'budget padding' which refers to the unscrupulous insertion of outrageous figures into the budget without legislative approval by legislative staff in connivance with members of the National Assembly.

(c) The Interpretation Act, 1964

The Interpretation Act, 1964 is outdated and spent because it has been left behind by changes in language, drafting styles and conventions. Drafting in Plain language, gender-neutral drafting and other developments in the field of legislating drafting have rendered it anachronistic.

⁸³ Uzodinma & Anor v Ihedioha & Ors (2020) LPELR-50260 (SC).

(d) The Electric Power Reform Act, 2005

The electricity situation in the country is quite appalling despite the subsisting Electric Power Reform Act, 2005⁸⁴. The Act has been implemented for over sixteen years with several billions of naira expended, yet the country has not been able to enjoy steady power supply implying that there is something needed to be done on the Act to make it effective for the achievement of its lofty objectives.

The Electricity Power Sector Reform Act, 2005 contains far-reaching provisions to ensure constant electricity supply in the country, but certain necessary provisions that would have helped in curbing electricity theft were omitted either as result of human frailty or inadequate research or consultation at the time of formulating the policy and its translation to legislation.

There are more other laws whose provisions are no longer realistic. For example, the Decimal Currency Act, 1971⁸⁵ Dangerous Drugs Act, 1935⁸⁶, Diplomatic Immunities and privileges Act, 1962⁸⁷, Flags of Nigerian Ships Act, 1968⁸⁸. Geneva Conventions Act, 1960⁸⁹, Act Authentication Act, 1962⁹⁰, Interpretation Act, 1964⁹¹, Harmful Waste (Special Criminal Provisions, etc) Act, 1988⁹², Hire Purchase Act, 1968⁹³, Labour Act 1971⁹⁴, Piers Act, 1917⁹⁵ and a host of other Acts are overdue for review and possible reform.

8. The Nexus between Post Legislative Scrutiny and Effective Legislation

There is an inextricable connection between Post Legislative Scrutiny and Effective Legislation. As earlier stated in this study, effective legislation has defied several

⁸⁴ Cap C20 LFN 2004

⁸⁵ Cap D2 LFN 2004

⁸⁶ Cap D1 LFN 2004

⁸⁷ Cap D9 LFN 2004

⁸⁸ Cap H4 LFN 2004

⁸⁹ Cap g3 LFN 2004

⁹⁰ Cap A2 LFN 2004

⁹¹ Cap 123 LFN 2004

⁹² Cap H1 LFN 2004

⁹³ Cap L1 LFN 2004

⁹⁴ Cap F31 LFN 2004

⁹⁵ Cap P18 LFN 2004

interventions geared towards achieving it in the past. The search for 'Effective Legislation' is still ongoing considering the fact that Legislation cannot remain effective for eternity notwithstanding how best it was drafted.

Human frailty and other shortcomings do not permit correct anticipation of all unforeseen circumstances that may subsequently crop up. There is no super human in the field of legislative drafting to foresee every future circumstance and make provisions in the legislation to accommodate them. Effectiveness of legislation is relative. Legislation that is effective today might not be effective tomorrow consequent upon inevitable changes in the society. Societal changes cause distortion or incursion in legislation thereby creating gaps or loopholes in the legislation and make it ineffective.

Post-Legislative Scrutiny is an imperative necessity for the effectiveness of legislation in all ramification. Every drafting error committed at the time of drafting as result of drafting by non-professionals, vagueness of words, ambiguity, inconsistencies, contradictions, unforeseen circumstances and unintended consequences that crop up subsequent to the enactment of the legislation can be corrected at the time of the review. Implementation problems can also be identified and corrected at review by means of amendment of the legislation or any other necessary means of law reform to make it effective.

Legislation can never remain effective for eternity due to changes in society and as such Post-Legislative Scrutiny which is the process of streamlining, modernizing and improving the applicable laws within the legal system so as to attune them to the *zeitgeist*⁹⁶ of the time and the prevailing norms in the society is a sure mechanism for the effectiveness of legislation. Through the instrumentality of Post-Legislative Scrutiny, new social, economic and political orders are established. It provides a leeway for addressing the imbalances and injustices inherent in the society.

Even if effective legislation is achieved by reason of clarity, precision, unambiguity and the capacity to produce the desired result at the time of enactment, the effectiveness will be

⁹⁶ A German word meaning the general mood or quality of a particular period of history, as shown by ideas, beliefs, etc. common at the time.

short-lived without Post-Legislative Scrutiny subsequent to the enactment and implementation of the legislation. The law must change at the same pace with the society. Legislation well-arranged and structured, properly punctuated and written in plain language and gender-neutral drafting with all other ingredients of effective legislation observed at the time of enactment still need to be subjected to Post-Legislative Scrutiny for effectiveness. Post-Legislative Scrutiny starts from law review and ends with any of the means of law reform among which are repeals, amendments, modifications, creation of new laws, consolidation and codification.⁹⁷

The solution to the problem of spent, outdated and anachronistic legislation apparently lies in socio-economic and politically informed Post-Legislative Scrutiny.

Based on the above, it is the view of the researcher that the conduct of Post-Legislative Scrutiny is the sure-fire to effectiveness of legislation and as such should be adopted in Nigeria as a parliamentary practice because of its functionality with respect to law reform. It works well in countries where it is utilized as a parliamentary practice for the regular review and possible reform of necessary laws for effectiveness.

9. Conclusion

The study examined the concept of Post Legislative Scrutiny and its capacity of being a mechanism for effective legislation. Upon review of relevant literature and cursory examination of considerable large number of Nigerian legislation, the researcher observed that legislation cannot be effective in perpetuity irrespective of the professionalism infused into the drafting of it. The observance of global best legislative drafting theories and conventions, in addition to compliance with grammatic and punctuation rules will not insulate it from distortions and incursions by subsequent unintended consequences and societal changes. Unintended consequences, technological advancement and other societal changes will inescapably cause distortions in the legislation and consequently reduce the regulatory or deterrent capacities of the legislation to make it ineffective with respect to

⁹⁷ O N Akun, 'The Process of Law Reform,' (2012) 1 (1) NIALS International Journal of Legislative Drafting, 102-127 at 103.

the achievement of targeted legal objectives or remedying of targeted mischiefs. Deterrent penalties at the time of the enactment of the legislation will diminish in their deterrent values at the long passage of time owing to inflation if not reformed through the instrumentality of Post-legislative Scrutiny in due course to accommodate omissions, correction of contradictions, ambiguities and unintended consequences.

It is impossible to anticipate everything and have all the necessary information about a matter at the time of drafting and enacting legislation. Human frailty and other shortcomings do not permit correct anticipation of all unforeseen circumstances that may subsequently crop up. There is no super human in the field of drafting to foresee every future circumstance and make provisions in the legislation to accommodate it. Policy makers and legislative drafters cannot ever have complete information to produce an airtight error free legislation within the time frame of drafting and enacting the legislation. This inability to get enough and accurate input from those who will be affected by the Bill and those that have the responsibility for implementation contributes to lack of information within the time frame of drafting and enacting the legislation.

Post-legislative Scrutiny which is a systematic evaluation of legislation is an imperative necessity for the effectiveness of legislation in all ramification. Every drafting error committed at the time of drafting as result of drafting by non-professionals, vagueness of words, and ambiguity can be corrected at the time of the review. Implementation problems can also be identified and corrected at review by means of amendment of the legislation or any other necessary means of law reform.

Therefore, for a piece of legislation to be effective with respect to achieving its targeted objectives or correcting its targeted mischiefs, it should be subjected to systematic evaluation to determine its effectiveness or not and where necessary reform it to synchronise with current realities. On this score, the research proffers the following recommendations:

The Senate and the House of Representatives in the National Assembly should establish Special Joint Standing Committee to take full responsibility to conduct comprehensive Post-

Legislative Scrutiny on all deserving legislation that were enacted by the National Assembly for the purpose of making amendment where necessary to synchronize them with current realities. The Joint Standing Committee should equally serve as a gateway where every proposed Bill should be subjected to serious analysis and scrutiny to determine its necessity or otherwise by examining the proposed Bill to see whether there is an existing law that can be merely amended to accommodate the proposed provisions in the new Bill so as not to proliferate legislation in the law books.

The National Assembly may, in the alternative, designate the National Institute for Legislative and Democratic Studies (NILDS) as a Post-Legislative Scrutiny Unit and saddle it with the responsibility to conduct Post-Legislative Scrutiny on necessary legislation regularly to determine the effectiveness of such legislation to achieve the targeted objectives and make necessary recommendation to the National Assembly for possible legislative action. This is a viable option because the National Institute for Legislative and Democratic Studies (NILDS) is a statutory body established with the sole purpose of providing legislative support services and capacity strengthening to the legislature in Nigeria and beyond.

Triggers of Post-Legislative Scrutiny such as review or sunset clauses should be inserted in our legislation henceforth to prompt Post-Legislative Scrutiny at the expiry of the duration stipulated in the legislation to move away from the era of crisis driven review of legislation. Memorandum of implementation be caused to be submitted by Ministers whose area of operation are covered by a particular legislation within a stipulated period. This does not however mean that the legislature must necessarily wait for the expiration of the stipulated review period when there are compelling reasons to review as technological advancement and other societal changes would always create loopholes and other unintended consequences in the legislation and make it ineffective as time goes on.

The recommendations proffered above will substantially address the problem of ineffectiveness of legislation in Nigeria. Nigeria should borrow a leaf from advanced democracies by regularly and consistently subjecting her legislation to Post-Legislative Scrutiny as functionality is the test of transferability of practices in other countries. The world is now a global village and as such no country can effectively immune itself from the happenings in other countries.