

**A CASE FOR AUTOCHTHONOUS (HOMEGROWN)
PROGRAMMES AND PROVIDERS IN LEGISLATIVE DRAFTING: A
COMPARATIVE STUDY OF NILS AND NIALS LEGISLATIVE
DRAFTING PROGRAMMES^{*1}**

Abstract

In recent times, quite a few studies have been published on the different kinds of formal training and teaching programmes in legislative studies conducted by different law schools of universities and other institutions. Some of the major studies in this respect include: Donaldson², Miers³ and Page, McHenderson and St.John Bates⁴, Stern⁵, Crabbe⁶, Webster⁷, Xanthaki⁸, Jaja⁹, and most recently Nand¹⁰.

Generally, the articles listed above have published studies of formal training programmes conducted by law schools and institutions within the United States of America, the United Kingdom (London and Edinburgh respectively), Fiji, South Pacific and even Zimbabwe.

However, none of these studies, has undertaken an examination of formal training programmes in legislative drafting that are currently on offer by institutions within Nigeria.

This article attempts to fill this gap in the literature on this subject area by examining the strengths and the weaknesses of the formal legislative drafting programmes on offer in Nigeria offered by the National Institute for Legislative Studies (NILS), National Assembly and the Nigerian

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² A.G.Donaldson, On Teaching Legislative Drafting (A Review Article) (1983) Statute Law Review, Vol.4, No.1, pp. 179-191.

³ D.Miers and A.Page, Teaching Legislation in Law Schools, (1980) Statute Law Review, p.23

⁴ H.McHenderson and T.St.J.N.Bates, Teaching Legislation in Edinburgh: An Outline (1980) Statute Law Review, 151.

⁵ B.J.Stern, Teaching Legislative Drafting: A Simulation Approach (1988) Journal of Legal Education, Vol.38, No.3, pp.391-399

⁶ V.C.R.A.Crabbe, Teaching Legislative Drafting: The Commonwealth Experience (1998) Statute Law Review, Vol.19, No.2, pp.113-128

⁷ R.Webster, Teaching Legislative Drafting: Reflections on the Commonwealth Secretariat Short Course (2010) Commonwealth Law Bulletin, Vol.36, Issue 1, pp.41-56.

⁸ H.Xanthaki, Duncan Berry: A Visionary of Training in Legislative Drafting (2011) The Loophole, Journal of the Commonwealth Association of Legislative Counsel (CALC), pp.18-26

⁹ T.C.Jaja, Teaching Legislative Drafting to Non-Lawyers: A Justify for Clinical Legal Education, (2012) European Journal of Law Reform, Vol.14, No. 1, pp.101-109

¹⁰ N.Nand, Teaching Legislative Drafting: The Pacific Experience (2012) International Journal of Legislative Drafting and Law Reform, Vol.1, Issue 1, pp.33-38

Institute of Advanced Legal Studies (NIALS). The choice of legislative drafting programmes in Nigeria is instructive considering that Nigeria has recently been classified as the fastest "growing economy in Africa as well as the most populous country in Africa"¹¹, Nigeria is also recognized as a leader within the ECOWAS sub-region and within Anglophone Africa and Commonwealth Africa in general. Given these indices, the lessons derived from an analysis of the strength and weakness of the formal legislative drafting programmes within Nigeria would be instructive to other Commonwealth African countries.

Introduction

Collectively, the common thread that runs through these articles is that legislative drafting has grown and evolved to become a full fledged sub-discipline within the legal profession worthy as a field of academic study¹² at the law faculties of universities as well as a subject area of formal training provided by institutions.

This modern prevailing view is contrary to the traditional view that legislative drafting was purely a professional skill that was capable of being acquired solely and only through learning-on-the-job through a minimum of "ten years apprenticeship"¹³ under a senior legislative drafter generically referred to as "Nellie"

From the outset, it must be noted that the intention of the authors and proponents of formal training programmes in legislative drafting is not to obliterate the existing on-the-job-training component. To the contrary, the intention is that formal training ought to serve as a complement that should be combined hand-in-glove with the traditional apprenticeship acquired through on-the-job-training in legislative drafting. This view was aptly expressed by one of the very few Nigerian authors on legislative drafting¹⁴ and more recently by Nand who rightly made the following observation about the Graduate Diploma in Legislative Drafting programme of the School of Law, University of the South Pacific as follows:

"This course alone however, is not enough to train a draftsman. After acquiring formal qualification, the drafter should be given further in-house practical training and attachments to other drafting offices ..."¹⁵

¹¹ See website of global consulting experts: McKinsey and Company:

http://www.mckinsey.com/global_locations/africa/nigeria accessed 21/11/2014, 9:40a.m. See also, K.Ogunlele, Nigeria, fastest growing African Country, Punch Newspaper, May 27,2013: <http://www.punchng.com/news/nigeria-fastest-growing-african-country-jonathan/> accessed 21/11/2014, 9:55a.m.

¹² H.Xanthaki, Legislative drafting a new sub-discipline of law is born (2013) *University of London IALS Law Review*, Vol.1, Issue 1, 57-70

¹³ See generally Sandra C.Markman, Training of Legislative Counsel: Learning to Draft without Nellie (2010) *Commonwealth Law Bulletin*, Vol.36, No.1, pp.25-39

¹⁴ R.Esebagbon, *The Nigerian Legislative Process-Bills, Budgetary Control and Committees* (Abuja: Law-Link Consults, 2005) p.75 rightly suggested the combination of "formal classroom training and apprenticeship" to provide the legislative drafter with needed "guidance and assistance".

¹⁵ N.Nand, Teaching Legislative Drafting: The Pacific Experience (2012) *International Journal of Legislative Drafting and Law Reform*, Vol.1, Issue 1, pp.33-38 at p.38

Based on the foregoing quotation, it is established and generally accepted that formal training and apprenticeship are both complementary methods of acquiring legislative drafting knowledge and skills.

The question arises: in the first instance, why is there an increase or clamour for increased training for legislative drafters be it formal training or apprenticeship?"

The need to address the "shortage of legislative drafters"¹⁶ within the small commonwealth jurisdictions appears to be the major rationale and argument in support of introduction of formal training programmes in legislative drafting. This shortage of drafters is admitted in one of the leading Nigerian legal study on legislative drafting¹⁷ and reports have¹⁸ already identified a shortage of legislative drafting staff within Nigeria's legislatures.

The cited reason for shortage of adequately trained legislative drafting staff and therefore justification for providing such formal training in legislative drafting for staff of Nigeria's legislatures is the fact that "...Nigeria's nascent democratic experience..."¹⁹ as a fledgling democracy since the year 1999 is not fully consolidated to the extent that democratic culture, values and skills such as legislative drafting are not yet fully imbibed.

While we agree with the above authors on the assertion that there is currently a shortage of legislative drafters in Nigeria, in line with best practice in legal research, it would be of much more persuasive argument to support such assertion with tangible empirical evidence. In comparison with the previous studies on this subject area, this study is novel and original considering that it seeks to provide empirical evidence to support its major findings and assertions. For example, whereas previous studies have simply asserted that there is a general problem of

¹⁶ See generally R.Hewaagama, *The Challenges of Legislative Drafting in Small Commonwealth Jurisdictions* (2010) Commonwealth Law Bulletin, Vol.36 (1),117 at 121

¹⁷ R.Esebagbon, *supra* at p.75 has rightly admitted that in Nigeria "this category of professionals [legislative drafters] may be hard to come by."

¹⁸ As a former Clerk of Nigeria's National Assembly recently admitted, "...we were confronted with shortage of qualified manpower in 1999 as far as management and administration of the legislature is concerned..." Interview with Dr.Ibrahim Salim, former Clerk of the National Assembly from 1994-2005, published in *The National Assembly Legislative Digest*, (2011) Vol.1, No.3, pp.81-90 at p.84. This view was re-echoed by the Clerk of the Senate of Nigeria's National Assembly when he said: "...the manpower of the National Assembly was diminishing... the National Assembly itself has trained a lot of staff in skills for legislative drafting and parliamentary practice and procedure..." Interview with Ben Efeturi, published in *The National Assembly Legislative Digest*, (2011) Vol.1, No.3, pp.112-114 at p.112

¹⁹ I.Peter, *The Nigerian Legislature: A Brief Historical Survey*, (2007) Kogi State University Bi Annual Journal of Public Law, pp.106-110 at p.110.

"shortage of legislative drafters", this present study has gone a step further by undertaking a survey of the statistics of legislative drafters at the Legal Department of the National Assembly in comparison with those in the legislatures/Parliaments of the model democracies of the Commonwealth namely the United Kingdom, Australia and the United States of America. The outcome of this survey provides evidence to support the assertion that there is indeed a shortage of legislative drafters in Nigeria.

Furthermore, this study is novel considering that it examines the existing formal training programmes in legislative drafting currently on offer within Nigeria. The preliminary examination reveals that based on the current shortage of legislative drafters, there is currently a shortage of training providers of formal legislative drafting programmes in Nigeria considering that only one institution offers a formal training programme that is accredited by the Nigerian Universities Commission (NUC). This is the National Institute for Legislative Studies (NILS). The evidence is presented below.

Statement of the problem: Shortage of Legislative Drafters and Legislative Drafting Programme Providers in Nigeria

Shortage of Legislative Drafters in Nigeria: The case study of the National Assembly

What criteria should be employed for determination of the shortage of legislative drafters in Nigeria?

Considering that we have already established that there is a shortage of legislative drafters within "small commonwealth jurisdictions" such as Nigeria, it is logical to consider the number of legislative drafters within the developed and larger commonwealth countries.

The first criterion is to determine what category of lawyers qualifies as legislative drafters in the context of this study. As used throughout this study, the term "legislative drafters" is limited to the lawyers that are in the employ of the legislative drafting Offices of the National Legislatures or Parliaments of the countries under analysis. The reason for such a limitation is because the central/Federal legislature or Parliament is a commonality that cuts across all the countries that are analysed in this study. There is wisdom in applying this criterion because some countries

such as the United Kingdom only have a central legislature and no regional legislatures or Parliaments such as the United States of America and Nigeria. This is not to imply that there are not other legislative drafting lawyers that are engaged within these legislatures or Parliaments. To the contrary, as a matter of the stipulation of legislation on the one hand and as a matter of legislative and Parliamentary Practice on the other hand, legislators are entitled to hire the services of legislative aides, these may include legislative drafting staff or consultants. In Nigeria's National Assembly, the employment of legislative aides as one of the entitlement of legislators²⁰ is legally recognized by virtue of the National Assembly Service Commission Act No.7 of 2000. The Drafting unit of the Legal Services Department of the National Assembly is one of the Divisions provided for under section 6 (b) of the Second Schedule of the National Assembly Service Commission Act 2000, which is currently undergoing some amendments. It is hoped that subject to availability of research grant, a future study shall undertake an empirical study of the shortage of legislative drafters within the thirty six (36) State Houses of Assembly in Nigeria

Having established the first criterion, the second criterion applied in this study is to calculate the average of the ratios of the number of legislators vis-à-vis the number of legislative drafters within the Legislative Drafting Offices of the Parliaments and legislatures within the developed countries of the commonwealth.

For the purposes of this study, the author has selected the Parliaments of the United Kingdom (U.K.), Australia, the (Federal Legislature) Congress of the United States of America and the National Assembly of Nigeria. The rationale for selection of the Parliaments of the U.K. and Australia on the one hand is that legislative drafting in Nigeria still applies major features of the common law legislative drafting tradition²¹ since Nigeria is a former colony of the U.K. This fact is also established by the leading legal studies on legislative drafting in Nigeria namely Onwe²² and Jaja²³. On the other hand Nigeria's 1999 CFRN-Constitution of the Federal Republic of Nigeria (as amended) is largely modeled after the Presidential²⁴ system of Government prescribed by the Constitution of the United States of America.

²⁰ See Legislative Aide in National Assembly-A Pillar of Democracy (A book of Readings)-(Abuja, National Secretariat of Nigerian Legislatures, 2007) pp.289-298 at 292.

²¹ This is a historical fact and can be deduced from the provisions of the Interpretation Act of Nigeria, No.1, January 2004, the primary purpose of the legislation is to stipulate the format and manner to be applied in drafting and construction of legislation in Nigeria. In a nutshell, the main focus of this legislation is to "provide for the construction and interpretation of Acts of the National Assembly" of Nigeria. A comparison of Nigeria's Interpretation Act with the 1948 Interpretation Act of the United Kingdom reveals similarity in terms of the legislative drafting style such as the use of headings, marginal notes, effects of repeals etc. This similarity is not limited to Nigeria alone; a legal study has established that the Interpretation Acts of most former U.K. Colonies and commonwealth countries are modeled after the UK Interpretation Act.

²² H.Onwe, *Groundwork of Legislative Drafting*, (Enugu, Snaap Press, Ltd., 2009) p.3 noted: "... The British drafting style and methodology, as a colonial legacy, was bequeathed to most commonwealth countries, especially Nigeria".

²³ See generally, T.C.Jaja, *Legislative Drafting: An Introduction to Theories and Principles* (Oisterwijk, Netherlands, Wolf Legal Publishers, 2012)

²⁴ Section 130, 1999 CFRN provides for an "elected President for the Federation of Nigeria"

There is a similar provision in the previous 1979 Constitution of Nigeria.

This is "one major departure" and difference from the Parliamentary system of Government in operation in Nigeria from 1960-1966 under the 1963 Constitution of Nigeria, see P.A.O. Oluyede, *Constitutional Law in Nigeria* (Ibadan, Evans Brothers (Nigeria Publishers) Limited, 2001) p.38.

In the United Kingdom where the Parliament (House of Commons) consists of six hundred and fifty members²⁵, a recent study on legislative drafting in the United Kingdom, has admitted that there are about 61²⁶ legislative drafting lawyers who are members of staff of the Office of Parliamentary Counsel-OPC. The OPC is the government agency responsible for drafting legislation for the Government and Parliament of the United Kingdom. In the Parliament of Australia which consists of two hundred and twenty-six members (Senate and House of Representatives),²⁷ Australia's Parliamentary Counsel Office website indicates that there are fifty-five(55) legislative drafting lawyers, whereas New Zealand's Parliamentary Counsel Office website indicates that there are eighty (80) staff. In the Congress of the United States, there are two legislative drafting offices, one for the House of Representatives²⁸ and the other for the Senate. There are currently "approximately about thirty (30)"²⁹ legislative drafting lawyers within the Office of Legislative Counsel of the Senate of the US Congress, while there are forty-five lawyers³⁰ in the Office of Legislative Counsel of the US Congress. The total number of legislators in the US Congress is five hundred and thirty-five (535), House of Representatives³¹ is four hundred and thirty-five (435) and Senate one hundred (100)³². In Nigeria's National Assembly³³ (Federal legislature) there are a total of four hundred and sixty-nine (469) legislators, three hundred and sixty (360) House of Representatives while there are one hundred and nine (109) senators. There are currently about seventy lawyers employed by the Legal Services Department of the National Assembly of Nigeria, according to a Principal Legal Officer³⁴, out of this number about twenty (20) are in the Legislative Drafting Unit.

²⁵ See U.K. Parliament website: <http://www.parliament.uk/business/commons/> accessed 24/11/2014 on 10:15a.m.

²⁶ See T.St.J.N.Bates, Legislative Drafting in the United Kingdom, paper presented on the Workshop on Different Approaches to Legislative Drafting in the EU Member States, 14 December 2009, pp.1-12 at p.5: Accessible on: http://www.europarl.europa.eu/document/activities/cont/201004/20100414ATT72737/20100414ATT72737_en.pdf accessed on 24/12/2014

²⁷ Accessed 24/11/2014, http://www.parliament.of Australia. http://aph.gov.au/About_Parliament

²⁸ See the website of the Office of Legislative Counsel, US Congress: <http://legcounsel.house.gov/> accessed 24/11/2014.

²⁹ See the May 2014 publication about the Office of Legislative Counsel, US Senate on the website of the Congressional Bureau of Research: <http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%0E%2BPL%5E%230> accessed 24/11/2014, see also the website of the Office of Legislative Counsel of the US Senate:

<http://www.senate.gov/artandhistory/history/resources/pdf/ReorganizationAppendixt.pdf> accessed 24/11/2014, 10:49a.m.

³⁰ See the Congressional Record, House, July 30, 2010, Vol.155,Pt.13,p.17398

http://books.google.com.ng/books?id=Gz7cl4b12i4C&pg=PA17400&lpg=PA17400&dq=number+of+lawyers+in+the+office+of+legislative+counsel+of+us+congress&source=bl&ots=HFDNgfFgD&sig=T1EBHiXIX7oH7t03GJ_zMuC&hl=en&sa=X&ei=CBZzVJj4J5Gvaf_-iA&ved=0CD0Q6AEwBQ#v=onepage&q=number%20of%20lawyers%20in%20the%20office%20of%20legislative%20counsel%20of%20us%20congress&f=false accessed 24/11/2014

³¹ See website of the US Congress House of Representatives: <http://www.house.gov/content/learn/> accessed 24/11/2014

³² See the website of the US Congress Senate:

http://www.senate.gov/pagelayout/senators/a_three_sections_with_tasers/states.htm accessed 24/11/2014

³³ See the website of Nigeria's National Assembly <http://www.nassnig.org/> accessed 24/11/2014.

³⁴ Telephone interview conducted on the 24/11/2014, Officer elected not to put his name on record. The Officer also presented a training workshop on Legislative Drafting of Motions, Lead Debates, Brief of Argument, Bill Scrutiny and Analysis conducted by the National Institute for Legislative Studies, Abuja from 29-31 October 2014.

For purposes of clarity, the figures and the statistical analysis is presented in a tabular form below:

S/No.	Name of Legislature	Total No. of Legislators	No. of Draft men	Total Percentage
1.	Congress of the United States of America	535	75	14.02%
2.	House of Commons of the United Kingdom	650	61	9.38%
3.	Parliament of Australia	226	55	24.33%
4.	National Assembly of Nigeria	469	20	4.26%

Based on the foregoing table, 1:7.29 is the average ratio of legislative drafting lawyers to legislators in legislatures and Parliaments within developed countries. This is applied as the ideal for National/Federal legislatures/Parliament. However, Nigeria falls below this average given that its own ratio is 1:23.45. Also, when viewed in terms of percentages, Nigeria also has the lowest percentage of legislative drafting lawyers vis-à-vis legislators. Taken together, these statistics confirm the assertion that there is indeed a shortage of legislative drafting lawyers in Nigeria at the National level.

Shortage of Institutions providing formal legislative drafting programmes in Nigeria

Another original contribution of this study is that it is the first study to undertake a survey of the institutions providing formal training in legislative drafting within Nigeria. In the context of this present study, the definition of institutions is restricted to institutions that are creation of an Act or law of the legislature or an institution registered under the relevant law such as the Companies and Allied Matters Act (CAMA), Chapter N50, Laws of the Federation of Nigeria 2004.

From a preliminary online search, this study found that there is a dearth of Nigeria's institutions that provide formal training in legislative drafting compared to the number of institutions³⁵ that provide training programmes

in different disciplines of the law or legal profession. This is based on the foregone presumption that legislative drafting is itself a "sub-discipline of the law"³⁶.

Using the criteria for identifying formal institutions set out above, in Nigeria at the time of writing this article and to the best of the knowledge of this author, there are only two institutions that are engaged in providing formal post-graduate academic training programmes in legislative drafting. These institutions are the Nigerian Institute of Advanced Legal Studies (NIALS)³⁷ and the National Institute for Legislative Studies (NILS)³⁸ respectively. In accordance with the criteria in this present study, the Nigerian Institute of Advanced Legal Studies (NIALS) was established by the NIALS Act No.18, 1984, whereas the National Institute for Legislative Studies (NILS) was established by the NILS Act March 2011. Although some other institutions such as the Faculty of Law, National Open University of Nigeria (NOUN)³⁹, Administrative Staff College of Nigeria (ASCON) and private organizations are engaged in provision of formal training in legislative drafting these training programmes are either gone extinct or are usually for short periods, and are not academic programmes to the extent that they do not carry academic credit units. Consequently, most Nigerian candidates have resorted to traveling overseas to undertake both short term and full-time postgraduate academic training programmes in such institutions as Royal Institute for Public Administration (RIPA), London, U.K.; IALS, University of London, ILI, Tulane University, Faculty of Law, University of the West Indies just a few.

However, these overseas programmes in legislative drafting come at very expensive financial costs when compared with the costs of similar programmes offered by Nigerian institutions. Furthermore, it could be argued that the Faculty, the contents and curricula of such overseas

³⁵ It is rightly stated that: "As at 2009, about 40 of the 95 universities in Nigeria offer Law as part of their menu of academic programmes" in T. Mamman, Reflections on Legal Education in Nigeria, a paper delivered at the Annual Justice Akanbi Lecture, University of Ilorin, November 8, 2010, pp.1-17 at p.5.

³⁶ See generally H.Xanthaki, Legislative drafting: a new sub-discipline of law is born (2013) University of London IALS Law Review, Vol.1, Issue 1, 57-70

³⁷ Since the year 1995, the NIALS has been engaged in provision of a Postgraduate Diploma in Legislative Drafting, the NIALS commenced a Master of Laws (LLM) in legislative drafting programme in the year 1997, and it commenced a Doctor of Philosophy (PhD) in legislative drafting programme in the year 2009. See generally the website of the Nigerian Institute of Advanced Legal Studies (NIALS): <http://nials-nigeria.org/nials/M.L.D.aspx> accessed 24/11/2014.

³⁸ In July 2014, NILS commenced its Postgraduate Diploma and Masters in Legislative Drafting programmes. This programme is conducted in collaboration with the Faculty of Law, University of Benin. See generally the 2014 NILS Postgraduate Student Handbook, available at NILS Postgraduate Office, Abuja, see also the NILS website: http://nils.gov.ng/masters_fall.php#p0 accessed 24/11/2014.

³⁹ Based a telephone interview with the Coordinator of the Legislative Drafting Programme, of NOUN, the programme was discontinued from the 2010/2011 academic session.

programmes in legislative drafting may not adequately be tailored to address the specific challenges of legislative drafting in Nigeria.

It is for the above reasons that this study focuses on the legislative drafting programmes on offer within Nigeria.

The perceived strengths and weaknesses of the Nigeria's postgraduate legislative drafting programmes and their providers

(a) Perceived Weaknesses

- (1) Academic Accreditation-As a general Rule, the Nigerian Universities Commission (NUC) is the official and statutory agency responsible for the regulation, accreditation and validation of all postgraduate academic programmes. The NUC was established by legislation in 1974⁴⁰. According to NUC Regulations, the written approval of the NUC is a mandatory requirement before the establishment of new programmes in Nigerian Universities. The NUC provides prescribed forms and formats for application to register new programmes. The overall objective of the NUC's requirement for accreditation of all new and postgraduate programmes is to uphold standards. Having agreed that the focus of this present study is the legislative drafting programmes in Nigeria, it follows logically that that the postgraduate legislative drafting programmes on offer in Nigeria ordinarily must satisfy the NUC requirements.

This study found that in terms of NUC accreditation, only the NILS legislative drafting programme has satisfied this requirement through its partnership with the Faculty of Law, University of Benin, this gives NILS an advantage over NIALS. To the contrary, the NIALS relies upon section 4 (c) of the NIALS Act 1984 as the legal basis for its conduct and award of postgraduate diploma and master of laws (LL.M) in legislative drafting degrees. For the avoidance of any doubts, section 4 (c) of the NIALS Act states one of the functions of the NIALS as follows: "to conduct courses of instruction in legislative drafting,

⁴⁰ See generally the NUC website: <http://www.nuc.edu.ng/pages/pages.asp?id=27> accessed 24/11/2014.

leading to the award of post graduate diploma or post-graduate degree". This current situation has caused difficulties for graduates of the NIALS legislative drafting programmes who are denied admission by several universities in Nigeria and abroad.

- (2) Absence of the topic of "Ethics of Legislative Drafting" in the relevant course textbooks. The NIALS legislative drafting programmes published a Training Manual for the Postgraduate Programme in Legislative Drafting (Lagos, Nigerian Institute of Advanced Legal Studies, 1997)⁴¹; whereas the NILS legislative drafting programme is roughly based on the S.S. Shikyl, Practical Guide on Legislative Drafting (Abuja, PARP/NILS, 2006). From an examination of these textbooks, this author found that none of these textbooks includes a topic on "the role of Ethics in legislative drafting". This is a major gap considering that ethical consideration is one of the key issues that modern legislative drafters have to grapple with. This view is expressed in the major textbooks on legislative drafting such as I.McLeod, Principles of Legislative and Regulatory Drafting (Oxford: Hart Publishing Limited, 2009) p.39 and C.Stefanou, Ethics and Legislative Drafting in C.Stefanou and H.Xanthaki, (eds.) Manual in Legislative Drafting (London: Department for International Development-DFID, 2005) p.6-7 just to mention a few.
- (3) Duration of the legislative drafting programmes. On the NIALS website, 6 months is the duration of the postgraduate Diploma in legislative drafting programme, whereas one year is the duration of the LL.M in legislative drafting programme. However, both on the NILS website and the 2014 Handbook, one year and two years are the duration of the NILS postgraduate Diploma and Masters in legislative drafting programmes respectively. It can be argued that the NILS legislative drafting programme would not be attractive to working class lawyers, who may have difficulty obtaining permission from their employers for the programme. This argument may be justified by a cursory look at the enrolment figures for the 2014/2015 academic session, wherein NILS has just eleven (11) candidates⁴² for its masters in legislative drafting programme. It can be argued that this figure

⁴¹ This textbook is not available to the general public, it was made available to this author during his scholarship as a candidate of the NIALS LL.M in legislative drafting programme during the 2005/2006 session.

⁴² This is published in the 2014 NILS Matriculation Brochure, available at NILS library, No.1 River Niger Street, Maitama, Abuja.

represents a low enrolment figure considering that the NILS tuition fees are lower than that of its major competitor-NIALS. This fact is also admitted in answers provided by participants in a Questionnaire administered by the Monitoring and Evaluation Department of NILS at a recent NILS training workshop on legislative drafting 29-31 December 2014.

- (4) Tuition Fees. NIALS charges seven hundred and fifty thousand naira (approximately £3,000 at 250 naira=£1) for its Master of Laws (LL.M) in legislative drafting, whereas NILS charges three hundred thousand naira (approximately £1,200 at 250 naira=£1) for its Master of Legislative Drafting. While NILS rates appear lower and affordable by institutional sponsors, it may still be unaffordable by lawyers who are in private practice.
- (5) Mode of Delivery. Both NILS and NIALS are delivered by classroom learning, none of them are yet to adopt online and distance learning modes of delivery of the programmes. The costs associated with classroom delivery such as travel, accommodation and feeding cost could be offset if both NILS and NIALS deploy information communication technology (ICT) at least as an alternative and option for delivery of its programmes.
- (6) Certificate awarded at the Completion of the programmes. Whereas NIALS awards a master in laws (LL.M) in legislative drafting degree, NILS awards a Master in legislative drafting degree, it can be argued that the LL.M degree is a much more attractive degree for potential participants who are lawyers.
- (7) Clinical Legal Education component of the legislative drafting programmes. A leading legal study by Jaja⁴³ has established that there is a growing trend to apply clinical legal education method in the teaching of legislative drafting. However, at the moment none of the analysed institutions has applied clinical legal education methods in teaching legislative drafting programmes.
 - ii) b) Perceived Strengths of the legislative drafting programmes
- (1) Autochthonous (homegrown) content of the Curriculum. Unlike most of the legislative drafting programmes offered by overseas institutions, the NILS programme is novel considering that it offers a compulsory mandatory course in Nigeria: Economy, State

⁴³ See generally T.C.Jaja, Teaching Legislative Drafting: The Necessity for Clinical Legal Education, (2012) European Journal of Law Reform, Vol. 14, No.1, pp. 101-109.

⁴⁴ NILS Postgraduate Student Handbook, 2014, p.15 or the online version on the website of NILS: <http://nils.gov.ng/postgraduate/NILS%20Masters%20Full%20time%20Courses.pdf>

and Society⁴⁴. This introductory course which forms part of the first semester is aimed at providing the background or context in which legislation is made and drafted in Nigeria.

The importance for legislative drafters to understand the wider context in which legislation is made and drafted is consistent with the modern thinking in the field of legislative drafting that legislative drafters ought to understand and even get involved in the shaping the policy that is translated into legislation. This is contrary to the traditional view that legislative drafter ought not to be involved in the shaping of policy at all. This traditional view has been described as a myth or at best a general rule which is subject to exceptions. Legislative drafters in "developing countries"⁴⁵ such as Nigeria are among those who are required to deal with issues of policy while drafting legislation. This added role, makes it necessary for them to understand the wider context of legislation such as the Nigerian Economy, State and the Society which such legislation is designed to regulate.

Appropriately, the content of the course is aimed at providing such background knowledge as the contents of this course is listed as: "Historical Background; national building; federalism and mass politics (political participation and voting, political parties, the news media); the economy: evolution, structure and management; governing institution: the Legislature, the Executive, and the Judiciary system... contemporary economic and social, and political problems of Nigeria"⁴⁶.

The prescribed textbooks for both the NIALS and NILS legislative drafting programmes are replete with examples of Nigerian legislation to illustrate legislative drafting topics. This is also another demonstration of the advantage of the autochthonous nature of the content of these programmes. For example at page 112 of the NIALS Training Manual and Legislative Expressions⁴⁷, the examples are drawn from the National Planning Commission Act 1992; the Civil Service Re-Organisation Act, and the Local Government Decree 1990. Also, in the NILS Practical Guide on Legislative Drafting (Abuja, PARP/NILS, 2006) p. 33, to illustrate the use of punctuation (semi-colon) in legislative drafting the provisions of

⁴⁵ I.McLeod, Principles of Legislative and Regulatory Drafting (Oxford: Hart Publishing, 2009) p.34

⁴⁶ NILS Postgraduate Student Handbook, 2014, p.16

Nigeria's Money Laundering Act, 2003; the Advanced Fee Fraud and other Related Offences Act, 1995 just to mention a few is provided. This is significant because the leading textbooks on legislative drafting published by overseas authors (such as G.Thornton, Legislative Drafting 4th Edition, (London, Butterworths, 1996) do not contain examples derived from Nigerian legislation.

- (2) Autochthonous (homegrown) Faculty-The credentials of the authors of the NIALS Training Manual for Postgraduate Programme in Legislative Drafting, 1997 includes five professors of law two of whom are Directors-General of the NIALS; a retired Chief Judge of a state in Nigeria; a former Attorney-General of a state in Nigeria; a former Solicitor-General, Federal Ministry of Justice, and a former Chief Legislative Drafter, Ministry of Justice of a State in Nigeria. The Coordinating Editor of the Manual is a Professor of Legislative Drafting and currently the Director-General of the NIALS. The credentials of these authors is significant considering that in addition to their formal qualifications as postgraduate degree holders in law, each of them holds not less than twenty years of practice experience as lawyers which puts them in good stead to write on the twenty-four chapters of this Manual. Based on the first-hand experience of this present author, as a former student of the NIALS LL.M in legislative drafting programme, in addition to the NIALS in-house teaching Faculty which includes Professors of law and external resource persons such as the Director of Legal Services Department, National Assembly.

The Faculty for the NILS Masters in legislative drafting programme also boosts an array of NILS academic staff and "17 external"⁴⁷ experts with relevant qualifications and experience in legislative drafting. For example, among the NILS academic staff, one of the members of the Faculty for the Masters of Legislative Drafting programme, it is significant that one of them holds a PhD degree in legislative drafting from the Institute of Advanced

⁴⁷ See the Academic Staff section of the Masters in Legislative Drafting programme on the NILS website: http://nils.gov.ng/masters_full.php#m9 accessed 25/11/2014.

Legal Studies, University of London. Among the external staff, there is a Professor of Law, who is also a Senior Advocate of Nigeria (SAN). The quality of the programme is guaranteed considering that as a general rule, NLS requirement for a "second class upper division and publications for research staff"⁴⁸.

(3) Comparative Law Component and approaches of the programmes

Both the NIALS and NLS legislative drafting programmes contain courses that apply comparative law to the study of legislative drafting. This is consistent with the current prevailing thinking that comparative law method and approach is an integral part of legislative drafting⁴⁹. The NIALS master of laws (LL.M) in legislative drafting programme contains a course in Comparative Constitutional law, while the NLS Masters in legislative drafting programme contains a course in "Comparative Legislative Drafting". One of the topics under this course is "the characteristics of Commonwealth drafting style, the characteristics of non-commonwealth drafting style"⁵⁰.

(4) Plain Language as a modern approach in Legislative Drafting

Both NLS⁵¹ and NIALS⁵² curriculum in legislative drafting contain topics on Plain language. This is consistent with the modern approach⁵³ and prevailing view in the field of legislative drafting.

As rightly observed by a recent study⁵⁴, the use of plain English language in drafting legislation and other legal documents is encouraged in Nigeria to prevent ambiguity and the resulting need to resort to litigation and

⁴⁸ See National Institute for Legislative Studies, NLS Scheme of Service (Abuja, January 2012) p.1

⁴⁹ See generally N.Lupo and L.Scaffardi (eds.) *Comparative Law in Legislative Drafting-The Increasing Importance of Dialogue amongst Parliaments* (The Netherlands, Eleven International Publishing, 2014).

⁵⁰ NLS Postgraduate Student Handbook, (Abuja, NLS, 2014) p.17

⁵¹ Supra at page 17, states: Plain language: Theories and History of Plain language, Grammatical and Legal Plain Language; Principles and Objectives of Plain Language; Techniques of Plain Language; Avoidable in Plain Language."

⁵² See generally A.O.Adekunle, "Notes on the Plain English Approach" in NIALS Manual on Postgraduate Programme in Legislative Drafting (Lagos, NIALS, 1997) 103-109.

⁵³ See sec H.Xanthaki, on Transferability of Legislative Solutions in C.Stefanou and H.Xanthaki (eds.) *Drafting Legislation-A Modern Approach* (Aldershot, U.K., Ashgate Publishing, 2008) pp.1-18 at p.12 plain language is identified as one of the tools of good quality legislation.

⁵⁴ See generally T. Opeibi, *Between Obscurity and Clarity in Nigerian Legal Discourse: Aspects of Language Use in Selected Written Texts* in A.Wagner and S. Cacciaguidi-Fahy, (eds.) *Obscurity and Clarity in Law-Prospects and Challenges* (Aldershot, U.K., Ashgate Publishing Ltd., 2008) pp.221-234.

courts of law for interpretation. The use of plain English is recommended to combat the traditional view of drafting legislation in archaic and legalese.

(5) Drafting of Legislative Research Report, and other Legislative Documents and Parliamentary Scrutiny of Bills and Bills Analysis

The curriculum of the NILS legislative drafting programme is significant and innovative considering that it includes topics on drafting of "legislative research report"⁵⁵. This is innovative considering that this topic is not included in the NIALS curriculum (nor is this included in the curriculum of other overseas programmes in legislative drafting such as the IALS, University of London just to mention a few). This innovation is significant considering that Bills and legislation are not the only documents that legislators require legislative drafters to draft for them. In the field of legislative drafting⁵⁶, it is recognized that Motions, Resolutions, Lead Debates are just a few examples of other legislative documents.

In accordance with prevailing best practice and modern approaches to legislative drafting, legislators generally require that in addition to bills, an accompanying or supporting document that provides in-depth background details about cost/benefit analysis of the proposed bill/legislation. Regardless, of the differences of nomenclature for such supporting documents, it is increasingly becoming an accepted trend in the field of legislative drafting. Closely related is the practice of scrutiny of bills by Parliaments before passage or enactment into law. The need for a supporting document such as a legislative research report to accompany every bill submitted to Parliament is reinforced by the practice of parliamentary scrutiny of bills. For example, in the Parliament of the United Kingdom, since the 1998/1999 Parliamentary session, it is now a mandatory requirement that every bill must be accompanied with a supporting document such as the research report stating the justification, the cost/benefit analysis for the proposed bill. The Nigerian National Assembly is now imbibing this best practice and modern approach in legislative drafting considering that it has recently established Bill Scrutiny Units in both the Senate⁵⁷ and House of Representatives.

⁵⁵ NILS Postgraduate Student Handbook (Abuja, NILS, 2014) p.16.

⁵⁶ See generally V.C.R.A.Crabbe, *Legislative Precedents* (London, Cavendish Publishing, 1993)

⁵⁷ Oral interview held on 31st October 2014 with Barrister (Mrs.) Chidiogo Anyigo is the Principal Legal Officer, Legal Services Department, National Assembly, currently on secondment to the Bills Scrutiny Unit, Senate, National Assembly of Nigeria.

In addition to its inclusion of these topics in the NILS Masters in legislative drafting programme, NILS has recently organized week-long training workshops on "Drafting of Motions, Lead Debates, Brief of Arguments, Bill Scrutiny and Analysis" at its training room. This training held from the 29th to 31st October 2014. In recognition of the importance of the roles of Bill Scrutiny and Bill Analysis and Legislative Drafting, the NILS has established a full-fledged Division of Bills and Legislative Drafting as a Unit of the Department of Legislative Support Services⁵⁸.

Conclusion

The foregoing analysis has provided the weaknesses and strengths of the legislative drafting programmes of both the NILS and NIALS. It is significant considering that it highlights the potential initiative, ability and capacity of Nigerians to develop their own autochthonous (homegrown) programmes in legislative drafting instead of over-dependence on overseas programmes.

However, this is only a preliminary background, a further future research would be required to determine whether the objectives of these programmes are achieved and sustained considering that the NILS programme is only in its first year of operation.

⁵⁸ See NILS Scheme of Service, January 2012, pg.12.