

Monitoring and Evaluating the Impact (Post-Legislative Scrutiny) of Emergency Regulation in Response to the COVID-19 Pandemic: A Case Study of Nigeria

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Introduction

This paper seeks to examine Post-Legislative Scrutiny's operationalisation in examining emergency regulations passed by the President of Nigeria in response to the COVID-19 pandemic that has led to human rights violations in Nigeria.¹ The study's importance lies in the fact that it explores a much-needed balance between the COVID-19 regulations and human rights concerns in emergency situations by the Legislature's oversight to ensure the perpetuation of democracy. The study is based on De Vrieze theory, which states that the legislative process is incomplete without the Post-Legislative Scrutiny (PLS) component, which involves legislatures reviewing the legislation they have passed to determine whether the laws passed are being implemented and whether the intended policy objectives are met.²

The emergence of the novel coronavirus disease (COVID-19) in December 2019 in Wuhan, in the Chinese province of Hubei, halted the ever-busy human society and threatened every nation.³ Following the World Health Organisation (WHO) declaration on 11 March 2020, COVID-19 was declared a public health emergency of international concern.⁴ On 25 February 2020, sub-Saharan Africa's first confirmed case of COVID-19 was announced in Nigeria,⁵ as at 21 August 2020, there were 51 304 confirmed cases, 37 885 patients discharged and 996 deaths were recorded in 36 States and the Federal Capital Territory⁶. As the country faced such a pandemic and a steady increase in the number of confirmed cases, the government had to take proactive steps to curtail the spread of the virus by passing regulations.

Nigeria has a federal system of government with a federal government and 36 state governments. As a Federal state and by the Constitution, Nigeria vests the power to make laws in the legislative arm at both the Federal and State levels.⁷ Legislation in Nigeria is the process of deliberate law-making by the National Assembly of the Federal Republic of Nigeria, recognised by the Constitution of the Federal Republic of Nigeria 1999 as having the power and authority to declare the law.⁸ The Federal Legislative arm of government has two chambers, the Senate and the House of Representatives responsible for the representation, law-making and oversight at the national level. Simultaneously, the 36 state assemblies are responsible for the same roles at the state level. The Constitution distributes functions and legislative authority, between the federal government and the state governments. There is no

¹ Africanews.com: 18 dead in the enforcement of Nigeria COVID-19 lockdown 2020 <<https://www.africanews.com/2020/04/17/18-dead-in-enforcement-of-nigeria-covid-19-lockdown-report/>> accessed 27 August 2020. Khalid I: Coronavirus: Security forces kill more Nigerians than Covid-19 -Mixed message from the president. 2020 <<https://www.bbc.co.uk/news/world-africa-52317196>> accessed 27 August 2020.

² F. De Vrieze, 'Principles for Post-Legislative Scrutiny by Parliament', Westminster Foundation for Democracy, London, 2017, 4.

³ M. T Osterholm, M. Shaker, 'Deadliest Enemy: Our War Against Killer Germs' (Hachette UK: London, UK, 2017).

⁴ World Health Organisation, 'WHO Director-General Opening Remarks at the Media Briefing on COVID:19- 11 March 2020' <<https://www.who.int/dg/speeches/detail/who-directorgeneral-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> accessed 12 April 2020.

⁵ BBC News 'Coronavirus: Nigeria confirms first case in sub-Saharan Africa' (28 February 2020) < www.bbc.com > accessed 27 August 2020.

⁶ NCDC, 'COVID-19 Nigeria, Nigeria Centre for Disease Control' <<https://covid19.ncdc.gov.ng/>> accessed 21 August 2020.

⁷ Constitution of the Federal Republic of Nigeria, s4.

⁸ *ibid*, s 4(1) and (2).

gainsaying that the Legislature's core legislative, oversight and representation functions provide an essential contribution to democracy and governance.

Nigeria's Legal Response to COVID-19

The President of the Federal Republic of Nigeria, in response to the COVID-19 pandemic on Sunday, 29 March 2020, detailed the stringent measures and restrictions the government would implement to contain the spread of the coronavirus. Based on powers given under the Quarantine Act of 1926, the President ordered the cessation of movement for Nigerians' safety and protection.⁹ The Quarantine Act 1926, gives the President and the country's health authorities broad powers to deal with public health crises. It allows the President to declare a place within the country an 'infected local area', and he is empowered, based on such a declaration, to make relevant regulations. It is also important to emphasise that quarantines are an 'exclusive matter' under the Constitution, and only the Federal Government has the authority to make laws relating to quarantines. The President chose not to invoke the provisions of Section 45, which read with Section 305(d) and (e) of the 1999 Constitution, empowers the President to declare a state of emergency when there is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof, requiring extraordinary measures to avert such threat to a section of the community in the Federation. Declaring a state of emergency is the only constitutionally approved requirement needed to confer legitimacy on civic rights' derogation. Rather than declaring a state of emergency, the President issued regulations, exercising powers conferred on him under the Quarantine Act 1926. These regulations passed by the President did not have to be laid before the Legislature. The regulations, as subsidiary legislation, are not in most cases brought before the Legislature for approval. On the other hand, a state of emergency declared by the President of the Federation of Nigeria would have necessitated publishing the proclamation in a gazette and the details of the state of emergency sent to the President of the Senate and the Speaker of the House of Representatives, for the legitimacy of any containment measures taken during the period of the pandemic.

The President is authorised under the Quarantine Act (the Act), among other things, to declare any infectious disease dangerous, to declare any area in or outside of Nigeria an infected area, and to issue regulations that prevent the spread of any dangerous contagious diseases. The power to issue regulations under the Quarantine Act has only been exercised once by the President, with the issuing of the Quarantine (Ships) Regulations, which authorised or required port health officers to take a host of measures to prevent the importation and spread of infectious diseases into and within Nigeria.¹⁰

The Quarantine Act is the primary law governing the prevention and suppression of dangerous infectious diseases. The Act states that it is to regulate 'the imposition of quarantine and make other provisions for preventing the introduction into and spread in Nigeria, and the transmission from Nigeria, of dangerous infectious diseases'.¹¹ The Act further authorises the President to issue regulations to prevent or suppress a dangerous infectious disease in an infected local area, any other area in Nigeria, or any area outside of Nigeria.¹² Backed by the powers of the Quarantine Act 1926, the President of the Federal Republic of Nigeria passed the COVID-19 Regulations 2020.

Based on the President's powers under the Quarantine Act, and passing the COVID-19 Regulations 2020, the Nigerian government took restrictive containment measures to curtail fundamental citizen rights. These include lockdowns of various states and a cessation of social and economic activities except those relating to essential services. While these measures followed existing public health advisories to curb the COVID-19 Pandemic, these curtailing powers have raised significant legal,

⁹ Victoria Ibezim-Chaeri, 'COVID-19: The Legality and Limits of the Presidents Emergency Powers' *Vanguard* (April 3, 2020) <<https://www.vanguardngr.com/2020/04/covid-19-the-legality-and-limits-of-the-presidents-emergency-powers/>> accessed 14 August 2020.

¹⁰ Quarantine Act of 1926, pmbi., 14 Laws of the Federation of Nigeria, Cap. Q2 (rev. ed. 2004).

¹¹ *ibid.*

¹² Quarantine Act of 1926.

constitutional, human rights, and legitimacy issues and concerns.¹³ Initially, there was the public acceptance of the restrictions of the COVID-19 Regulations, signified by a high degree of compliance, but the manner of enforcement of the restrictions in several areas around the country led to reports of human rights abuses; killings, incarcerations without court orders in places where *physical distancing* was impossible, *demolition of buildings*¹⁴ and *deportation of young 'almajiris' (child beggars)*.¹⁵ These measures were not subject to any form of review or scrutiny by the Legislature. The challenges to human rights and the issues arising during the pandemic have necessitated and given grounds for the National Assembly to propose new legislation. The National Assembly has been presented with bills from both the House of Representatives and the Senate, which aim to strengthen Nigeria's public health institute, the Nigeria Centre for Disease Control's mandate and clarify the manner of declaring a public health emergency. However, there are concerns relating to both bills, which have hindered the passing of the bills into law.¹⁶ Consequently, the extant law and legal framework for combating the pandemic remains the Quarantine Act 1926.

Given the emerging incidences of human rights breaches during the pandemic in Nigeria, entrenching a robust framework of Post-Legislative Scrutiny (PLS) of passed legislation is an imperative that cannot be ignored.

Delegation of law-making powers can be traced to the Constitution, Sections 4(1) and 4(6) vest the legislative powers on the National Assembly and the State Houses of Assembly.¹⁷ Regulations allow for quick changes to be made without the government having to push through new legislation, and they can be used for those issues that require high levels of flexibility in their implementation.¹⁸

The Nigerian President exercised delegated powers under the Quarantine Act 1926, passing regulations prescribing and regulating its measures under an executive control without any recourse to the National Assembly.¹⁹ While the Emergency law may provide for any danger or disaster and requires a cumbersome process, the Quarantine Act is specific and dwells solely on health and infectious diseases. The COVID-19 pandemic falls under 'plague' in the definition of 'dangerous infectious disease' under Section 2 of the Quarantine Act, and all fundamental rights can be circumscribed in the interest of public health.

Considering the flexibility and appeal of regulations in emergency situations, the delegated powers to legislate should not be left unchecked; otherwise, this can pose a threat to democracy. Thus, there is a need for the Legislature to have structures that promote the effective application of the post-legislative scrutiny of primary legislation and delegated or subsidiary legislation as part of the legislative process.

Regulations and Post-Legislative Scrutiny (PLS)

The Legislature, while giving away the power to pass legislation under a delegated authority²⁰, should have safeguards in place to ensure that these laws, when passed, fulfil the purpose for which they were enacted and produce the regulatory results intended by the policymakers.²¹ Regulations are delegated legislation and form a massive part of any legal system as they form part of the legislative process.

¹³ Cheluchi Onyemelukwe, 'The Law and Human Rights in Nigeria's Response to the COVID-19 Pandemic' (June 4, 2020) <<https://blog.petriefrom.law.harvard.edu/2020/06/04/the-law-and-human-rights-in-nigerias-response-to-the-covid-19-pandemic/>> accessed 15 August 2020.

¹⁴ Oluwatosin Adeshokan, 'Coronavirus Demolition of Hotels in Rivers State: Illegal Use of Lockdown?' (The African Report Corona Chronicles 18-22 May 2020) <<https://www.theafricareport.com/28420/coronavirus-demolition-of-hotels-in-rivers-state-illegal-use-of-lockdown/>> accessed 17 August 2020.

¹⁵ BBC NEWS, 'Coronavirus in Nigeria: The Child Beggars at the Heart of the Outbreak, 16 May 2020' <<https://www.bbc.co.uk/news/world-africa-52617551>> accessed 17 August 2020.

¹⁶ Yusuf Akinpelu, '#StoptheNCDCCBill: Controversy trails Bill Sponsored by Gbajabiamila to fight infectious Diseases', <<https://www.premiumtimesng.com/news/top-news/390724-stopthencdcbill-controversy-trails-bill-sponsored-by-gbajabiamila-to-fight-infectious-diseases.html>> accessed 16 August 2020.

¹⁷ Constitution FRN 1999 as Amended.

¹⁸ H Xanthaki, *Thornton's Legislative Drafting*, (5th edn, Bloomsbury Professional, 2013) 404.

¹⁹ Henry Ojelu and Dania Onozure, 'Nigeria: COVID-19 - Lawyers Divided Over President's Power to Invoke State of Emergency, Quarantine Act', 2 April 2020 <<https://allafrica.com/stories/202004020172.html>> accessed 17 August 2020.

²⁰ Xanthaki (n18) 403, 523.

²¹ Helen Xanthaki, 'The Problem of Quality in EU Legislation: What on Earth is Really Wrong' (2001) VLE.

Broad areas of laws that require significant amounts of detail are regulated by delegated legislation.²² They have an equal force of law as the empowering Act²³ because they have legitimacy from Acts of the Legislature. They can only be made where there is an express provision in the Primary Legislation to do so.²⁴

The Executive can make regulations without passing them on to Parliament for scrutiny,²⁵ therefore, control over delegated legislation by the Legislature has been criticised in Nigeria.²⁶ It has been argued that the Legislature which gives these powers, should be able to exercise the highest control over delegated legislation.²⁷ The Legislature should be able to ensure proper oversight of the COVID-19 Regulations 2020 passed by the President.

This can be done by looking at the enabling clause and prescribing several control features like tabling and disallowance, and prescribing some procedural requirements like consultation, publication, and the affirmation by both Houses of Parliament²⁸ before regulations can be said to be in force, but this is non-existent in Nigeria today.

As a country, Nigeria does not have an adequate system of legislative scrutiny of delegated legislation in place. Instead, there is total reliance on the Executive arm of government and where the provisions are in dispute, on judicial control, to conduct scrutiny after the passing of regulations, which is not enough.²⁹ This may be due to the political structure of Nigeria, which operates the Presidential system where the Executive is separate from the Legislative and Judicial arms of government and practices separation of powers, and it is argued that scrutiny of regulations made by the Executive arm is the prerogative of the Executive arm of government.³⁰ And this practice raises questions about the adequacy of the process of delegated legislation in Nigeria³¹.

The President's exercise of powers and passing of the COVID-19 Regulations 2020 for the response to COVID-19 has legal justification. Because of the pandemic it was necessary to make regulations without prior Legislative approval, which introduced lockdown and restriction of movements within and between States in Nigeria in response to the COVID-19 pandemic, even though Chapter IV of the 1999 Constitution upholds the legal enforcement of the fundamental rights.

The rule of law underpins peaceful societies and encourages the monitoring of statutes to protect fundamental rights and the enhancement of human dignity and liberty.³² Therefore, there should be scrutiny and monitoring of the restrictions on human rights put in place to upend the Covid-19 pandemic. In Nigeria there have been cases of rights' violations of vulnerable groups perpetrated by law enforcement officials in enforcing the regulations³³ which authorise these restrictions. These regulations have not been brought before the Legislature for scrutiny. The Rule of Law requires proper law-making procedures to be followed. The longer these emergency procedures are imposed without review or

²² Ian McLeod, *Principles of Legislative and Regulatory Drafting*, Oxford and Portland Oregon, 2009, 159.

²³ D R Miers and A C Page, *Legislation*, London Sweet and Maxwell 1982, 140.

²⁴ S O Imhanobe, 'Delegated Legislation', *Fundamentals of Legislative Drafting*, edited by Epiphany Azinge, Vivian Madu, Nigerian Institute of Advanced Legal Studies 2012, 196.

²⁵ D R Miers and A C Page, *Legislation* (London Sweet and Maxwell 1982) 140.

²⁶ A Toriola Olewo, *Administrative Law in Nigeria* (Jator Publishing Company 1997) 66.

²⁷ Oleyami T.O, *The Challenges of Controlling Administrative Legislation in Nigeria*, www.nials.nigeria.org, assessed 12 July 2014.

²⁸ Chapter 15, *Legislation and Disallowance* Department of Parliamentary Services 325.

²⁹ Beatson, Matthews and Elliott's, *Administrative Law text and Materials*, third edn, Oxford University Press 2005, 635.

³⁰ An Interview with Senator Ita Enang, Chairman Senate Committee on Rules and Business, Nigerian National Assembly, Nigeria (13 May 2015).

³¹ Ben Nwabueze, *Constitutional Law of the Nigerian Republic* 1964, 205.

³² *Federal Republic of Nigeria v Ifegwu* (2003) FWLR (Pt 167) 703 – 758 (Uwaifo J), Solomon Amadasun, 'COVID-19 palaver: Ending rights violations of vulnerable groups in Africa'.(June 25,2020) <10.1016/j.worlddev.2020.105054> accessed 21 August 2020.

³³ Solomon Amadasun, 'COVID-19 palaver: Ending rights violations of vulnerable groups in Africa'.(June 25,2020) <10.1016/j.worlddev.2020.105054> accessed 21 August 2020.

scrutiny, the less 'Rule of Law' compliant such regulations are,³⁴ encouraging dictatorship and violations of the rights of the people.

Given that there is no existing structure for post-legislative scrutiny of laws and delegated legislation in Nigeria, introducing it may raise fundamental questions about the relationship between the Executive and the Legislature. This may be one of the main reasons why an evaluation of PLS application in Nigeria's Legislature does not offer any evidence of its practice. This paper argues that it is imperative that an analysis of the impact of laws passed by the Legislature be institutionalised into the legislative process to ensure that the process is consistent with good legislative practice. After the law is passed, PLS can reveal and address implementation gaps.

Experts have argued that general statutory provisions relating to delegated legislation should be introduced and laid before the Legislature.³⁵ The principle of laying is for the Legislature to scrutinise these instruments either before or after they are made, to ensure that they are in line with the stated requirements. The laying requirement is applicable in Britain, but there is no such process in Nigeria. Most times, and by default, scrutiny of regulations passed are left to the Executive and Ministerial departments which passed these instruments, leaving the Legislature with little or no control.³⁶

Post-Legislative Scrutiny: A Safeguard for Human Rights and Democracy in Nigeria

The Legislature of Nigeria ought to put in place a process for scrutinising legislation and regulations passed. The Legislature should be seen to exercise oversight of the implementation of these procedures. At present, the Nigerian Legislature does not have provisions for such procedure or structure in the Federal Constitution, any legislative instrument, the Senate's standing orders or House of Representative Rules. It appraises the content and resultant effects of most enacted legislation, but there are no parameters in place for measuring the effectiveness or ineffectiveness of legislation in Nigeria.³⁷

Evaluation of legislation establishes a link between the law and its effects³⁸. It is a crucial element of legislative methodology as it ensures that legislation is responsive to social reality and checks legislative actions' social adequacy.³⁹ Chukwuma posits that Nigeria appears to have been left behind in the measurement revolution and that her government's decisions are not based on an evaluation, leading to ineffectiveness and inefficiency.⁴⁰ Ihedioha reiterates this, stating that legislative functions do not cease with the passage of a bill. There is still the need to ensure systematic monitoring of legislation's implementation to know if it is effective and what its consequences are in practice.⁴¹

Although there are unique situations where the principal Act would expressly state that regulations passed by the Executive be laid before the Legislature⁴², the scrutiny of such instruments, mostly done by a standing committee, are mostly affirmative. There are 146 standing committees in both houses in the National Assembly⁴³, two of which are designated to carry out post-legislative scrutiny of legislation.

³⁴ Ronan Cormacain, 'Parliamentary Scrutiny of Coronavirus Lockdown Regulations: A Rule of Law Analysis' (28 September 2020) <<https://binghamcentre.biicl.org/publications/parliamentary-scrutiny-of-coronavirus-lockdown-regulations-a-rule-of-law-analysis>> accessed 15 December 2020.

³⁵ Report of the Elias Commission of Inquiry into the Administration, Economic and Industrial Relations of the Nigerian railway Corporation in 1960, 20.

³⁶ Jemina Fabiawari Benson, 'Delegated Legislation in Nigeria: The Challenges of Control', LLM Dissertation 2014.

³⁷ Interview with Senator Victor Ndoma Egba, Senate Leader, National Assembly, Nigeria (7 May 2015).

³⁸ Koen Aeken, 'From Vision to Reality: Ex Post Evaluation of Legislation' (2011) 5 (1) *Legisprudence* 55.

³⁹ L Mader 'Evaluating the Effects: A Contribution to The Quality of Legislation' (2001) 22 (2) *Statute Law Review* 119-131.

⁴⁰ Innocent Chukwuma and Eban Ebai, 'Promoting the Rule of Law Through Evaluation and Performance Measurement in Nigeria: Challenges and Prospects' (2008) CLEEN Foundation

<https://worldjusticeproject.org/sites/default/files/promoting_the_rule_of_law_through_evaluation_and_performance_measurement_in_nigeria_chukwuma_ebai.pdf> 2 May 2019.

⁴¹ Emeka Ihedioha, 'The Legislative Role Misconceptions and Experiencing in the Consolidation of Democracy in Nigeria', Public Lecture Organized by The Department of Political Science, University of Lagos, (25th June, 2012) 5.

⁴² National Assembly Service Commission Act 2000, S13(2), 7 Laws of the Federation of Nigeria.

⁴³ Federal Republic of Nigeria, National Assembly

<https://en.wikipedia.org/wiki/List_of_committees_of_the_National_Assembly_of_Nigeria#:~:text=This%20is%20a%20list%20of>

In the Senate, it is the Committee on Business and Rule, and in the House of Representatives, it is the Committee on Rules and Business. The role of these committees is to monitor the implementation of laws and regulations in the respective Houses. But this is hardly done because, as stated earlier, from the standpoint of separation of powers, it is argued that under the Nigerian Presidential system of government, post-legislative scrutiny is the prerogative of the Executive arm of government.⁴⁴

Even though structures exist to trigger post-legislative scrutiny, standardised methodologies and procedures are absent. The absence of political will to operationalise post-legislative scrutiny may be the reason for the deficit.

The Nigerian government would greatly benefit from having guiding principles on assessing legislation by post-legislative scrutiny. Post-legislative scrutiny is the review of a piece of legislation which is in force. It is sometimes undertaken in an *ad hoc* manner by government departments. It can be prompted by a 'review clause' inserted into a specific piece of legislation or may be undertaken through a structured process which covers all or most Acts. A lack of post-legislative scrutiny method may effect difficulty in evaluating the quality of legislation. Since there are presently no parameters for measuring the effectiveness of the laws passed and there is no feedback system⁴⁵, there have been recommendations that best practice should be institutionalised into the process of law-making⁴⁶ and integrating society through transformative legislation.⁴⁷

Post-legislative scrutiny can show what worked, what did not work and why, and what needs to be changed,⁴⁸ therefore, the solution to the problem would be to ensure that the standing committees in both Houses of the National Assembly carry out effective post-legislative scrutiny. Their committees have clear terms of reference that are most suited to perform this function of scrutiny. In effect, this would make the government and administrative officers who make delegated legislation more careful in their exercise of these powers.

Post-legislative scrutiny can also be considered as one aspect of oversight over legislation passed by the Legislature; the oversight of the laws that have been enacted to ensure scrutiny of the Executive's activities for efficiency and probity.⁴⁹ Oversight may link the legislative role with the oversight role of Legislature, with the potential to enhance the iterative relationship between legislation and oversight in the Legislature's governance role and the scrutiny process.

There can be an established link between the Legislature's legislative and oversight role to evaluate legislation after it has been passed. Legislators are tasked with law-making; they also supervise and scrutinise government performance. Section 62(1) of the 1999 Constitution and the Standing Orders & Rules of the House of Representative and the Senate empower both Houses of Assembly to carry out oversight functions, which can also be applied to laws passed. Having this process of oversight institutionalised within the committee mandate, in principle, prevents the risk of legislative work being divorced from consideration of its outcomes. The oversight of laws passed may lead to a considerable increase in the workload of the committee. Still, this form of post-legislative scrutiny could be considered particularly useful in establishing a realistic but effective oversight of legislation passed, and to locate PLS clearly within the framework of legislative responsibilities of the members of the Legislature in Nigeria. PLS can be operationalised as a part of the committee's oversight function, bringing in

[%20the%20standing%20committeesHouse%20of%20Representatives%20currently%20has%2089%20standing%20committee s>accessed 27 August 2020.](#)

⁴⁴ An Interview with Senator Ita Enang, Chairman Senate Committee on Rules and Business, Nigerian National Assembly, Nigeria (13 May 2015).

⁴⁵ Victor Ndoma Egba (n35).

⁴⁶ O B Agu, 'Legislative Drafters and a Transformative Laws' in Epiphany Azinge and Adejoke Adediran (eds) *Legislative Drafting and Transformative Laws* (Nigerian Institute of Advanced Legal Studies, 2013) 106-107.

⁴⁷ J Y Fashagba, 'The Nigerian Legislature and Social- Political Re-Engineering in the Fourth Republic' in E Azinge and A. Adediran (eds) *Legislative Drafting and Transformative Laws* (NIALS Press, 2013) 14.

⁴⁸ Franklin De Vrieze, *Post-Legislative Scrutiny. Guide for Parliaments*, Westminster Foundation for Democracy, 2017.

⁴⁹ K John and T. N Robert (1999), A Concept Paper on Legislatures and Good Governance-<www.pogar.org>accessed 27 August 2020.

legislative monitoring of enacted legislations in the legislative system and a presidential system of government.

As a continuous process, the core of PLS is to harvest lessons learned and best practices to inform better drafting and implementation of the law to narrow the gap between policy intents and its outcomes. The absence of a PLS method by legislatures runs the risk of an uncontrolled lack of full enactment of laws, with specific legal provisions of the law not being brought into force and therefore ineffective. The law may ultimately fail to meet the intended policy objectives and hence, there is the risk of dead-letter laws.

Conclusion

The COVID-19 pandemic is a first of its kind and a test for Nigeria's legal framework in determining the appropriate procedure and limits on emergency powers in response to infectious diseases. Post-legislative scrutiny is an approach which may identify the gap in the Nigerian regulations and suggest ways that could improve the system in Nigeria. It may be argued that this is a practice in the British system and not applicable to the Nigerian political system. Though the political system operative in Nigeria, which is the government's presidential system, is different from the parliamentary system in the United Kingdom, post-legislative scrutiny can also be operationalised in Nigeria. Post-legislative scrutiny ought to be a part of the legislative work in holding the Executive to account.⁵⁰ It is assumed that the Executive arm of government will conduct the scrutiny or review of enacted legislation. There is a Commission that addresses this in Nigeria called the Law Reform Commission. The Law Reform Commission was established by the Nigerian Law Reform Commission Act 1979. The Commission identifies laws that require amendments or repeal.

According to some Senate members in the National Assembly, the Law Reform Commission is dormant and may be ineffective⁵¹. From 2007 to 2020 the Commission only attempted seven reforms.⁵²

Post-Legislative scrutiny should involve both the Executive and the Legislature and combine internal departmental scrutiny with legislative scrutiny. It is suggested that post-legislative scrutiny procedures will be most justified if concerned with legislation that has a substantial social impact⁵³, and the Regulation on COVID-19 falls within this purview.

Post-legislative scrutiny takes the form of a separate mechanism within the Legislature. The evaluation process will also be a by-product of a Legislature carrying out effective oversight and effective law-making and abiding by statutory obligations.⁵⁴

It is evident from the discussion that post-legislative scrutiny of delegated legislation practised in jurisdictions like the United Kingdom is not presently being operationalised in Nigeria. The kind of control that exists in Nigeria can be said to be from the Executive because regulations are usually made by the President or by the Governor in Council or if the powers are to be exercised by some other persons, on the approval of a higher authority.⁵⁵ It has been argued that this is to some extent, a kind of scrutiny in itself but the position in this paper is that such level of scrutiny carried out by the Executive is not effective in curbing possible abuse of human rights. And the laying of regulations before the Legislature, when it is done, does not necessitate any further action from the Legislature.

The Legislature cannot effectively control the exercise of delegated legislation if the delegated legislation is not laid before it with the proper legislative procedure for challenging unsatisfactory

⁵⁰ F. De Vrieze (n2).

⁵¹ Henry Omoru, 'Law Reform Commission is Dormant' Vanguard (Nigeria May 21, 2020) <<https://www.vanguardngr.com/2020/05/law-reform-commission-is-dormant-%E2%80%95senate/>> Samson Atekoja Usman 'Nigerian Law Reform Commission Dormant' Dily Post (Nigeria May 20, 2020) <https://dailypost.ng/2020/05/20/nigerias-law-reform-commission-dormant-senator-opeyemi/>> accessed 14 December 2020.

⁵² *ibid.*

⁵³ F. De Vrieze(n2)13.

⁵⁴ F. De Vrieze(n2).

⁵⁵ S O Imhanobe, 'Delegated Legislation' in Epiphany Azinge, Vivian Madu(eds) *Fundamentals of Legislative Drafting* (Nigerian Institute of Advanced Legal Studies 2012) 196.

regulations. The Legislature will only be able to fulfil a supervisory function over delegated legislation if stipulations can be made for detailed scrutiny of specific regulations in legislative committees with narrow but clearly defined terms of reference and this will go a long way to curtail the risk of constitutionally undesirable features being imported into delegated legislation.⁵⁶

The Legislature has no existing guidelines for the scrutiny of delegated legislation or the laying of regulations after they have been passed. The powers granted to the Executive to make rules are exercised; there is no scrutiny over it to ensure that it is within the limits of the powers conferred. As such the breadth of powers currently enjoyed by executive bodies, such as Public Health authorities and security forces under the COVID-19 Regulation 2020, cannot be brought before the Legislature to be scrutinised or reviewed.

The Nigerian Legislature is empowered to have oversight⁵⁷ and ensure democratic rule and respect for human rights. It can operationalise scrutiny procedures to scrutinise regulations passed, and this can be operationalised to scrutinise the COVID-19 Regulation 2020.

Oversight will ensure that the COVID-19 Regulation 2020 is brought before a relevant Standing Committee for oversight to investigate if it is achieving its intended purpose. The committees are already used to carrying out these functions. Still, in this case, regarding legislation that has been passed into law already, this is in line with international human rights commitments to ensure that these temporarily imposed restrictions on rights do not become permanent.

It cannot be overemphasised that the breadth of powers that executive authorities currently enjoy should be under regular scrutiny and review. Safeguards ought to be in place, and multiple layers of oversight should be conducted.

This paper has found that PLS does not occur in Nigeria and Nigeria is among the countries in Africa that have not implemented Post-Legislative Scrutiny in the national legislative process. There is a need for legislative accountability that ensures that the Legislature having oversight powers must check the Executive's activities to implement government policies and programmes for the citizens' benefit and interest and uphold international human rights commitments.

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⁵⁶ Kersell, John E, *Parliamentary Supervision of Delegated Legislation: The United Kingdom, Australia, New Zealand and Canada*, (London Stevens, 1960) 111.

⁵⁷ Constitution of the Federal Republic of Nigeria, s4(1) and (2).