AN APPRAISAL OF THE IMPACT OF THE NIGERIAN LAW REFORM COMMISSION IN THE LEGISLATIVE PROCESS

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A DISSERTATION SUBMITTED TO THE UNIVERSITY OF BENIN/NATIONAL INSTITUTE FOR LEGISLATIVE AND DEMOCRATIC STUDIES (UNIBEN/NILDS) POST GRADUATE PROGRAMMES IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS (LLM) DEGREE IN LEGISLATIVE DRAFTING.

APRIL, 2022

CERTIFICATION

This is to certify that this dissertation titled work **"An Appraisal of the Impact of the Nigerian Law Reform Commission in the Legislative Process"** is the original work of IMARHA OGHENENYEROWO REUBEN, Matric No: PG/NLS/1900095. It is further certified that this thesis has not been submitted either in part or whole to this University or any other academic institution for any degree or programme, and that all the sources used have been duly acknowledged by proper references.

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DEDICATION

This work is dedicated to the Almighty God who gave me the wisdom and grace to research beyond my imagination and to those who have contributed to this field of study.

ACKNOWLEDGEMENT

Special thanks to Loveth my wife, my kids Maro and T.J for their support.

To Dr. Kana my project supervisor and Dr. Mohammed Amali for their outstanding encouragement towards the fulfillment of this work.

Mrs. Adaora Onwuasigwe, Mr. Perry and Mr. Chijioke Nwoye are not left out for helping me with research materials.

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NLRC	Nigerian Law Reform Commission
LFN	Laws of the Federation of Nigeria
US	United State of America
UK	United Kingdom
PITAM	Personal Income Tax (Amendment) Act

ABSTRACT

The topic of this dissertation was chosen because of the lack of understanding of the Nigerian Law Reform Commission (NLRC or the Commission) organizational structure, the Commissions relationship with the National Assembly; the functions of the Commission within the Executive arm superstructure; the relegation and poor implementation of the Reports of the Nigerian Law Reform Commission (NLRC or the Commission) despite its impact in legislative process in Nigeria. Impact of the NLRC in the legislative process in Nigeria cannot be ignored considering the fact that the NLRC is an essential part of the improvement of the laws in Nigeria. For this reason this research was carried out to appraise impact of the Nigeria Law Reform Commission in the legislative process in Nigeria.

The methodology employed in this research was the doctrinal approach in order to achieve each research objectives. In applying this methodology, analyses were made on statutory provisions as well as case law, and reliance was placed on both primary and secondary data. Text books and articles in journals, together with government reports helped to consider the primary sources used in this research. Apart from the text books, the Nigerian Law Reform Commission Act 1979, the Nigerian Law Reform Commission (Repeal and Re-Enactment) Act 2022, articles in journals which were found in libraries, other primary and secondary materials were collected from the internet. The researcher achieved this using relevant literature search methods and the Commissions Journals and Reform Report, internet materials such as journals and articles to supplement the available materials. This area of research work required comparative analyses that may lead to the review of the Nigeria Law Reform Commission (Repeal and Re-Enactment) Act 2022.

The findings of this work has brought expositions to the Commissions organizational structure and its operational procedure, the interrelationship between the work of the Commission and the National Assembly, the functions of the Commission and ways it impacted in the overall growth of the Nigerian

law and modernization process. This work also exposed the relegation of the Commission and poor implementation of the Commission's Report as well as the imperative for retaining the Commission. Further, despite the laudable provisions of the Law Reform Commission (Repeal and Re-Enactment) Act 2022, the Commission is largely dependent on the Attorney-General of the Federation. Again, there is no time limit provided in the instant Act within which the Attorney-General of the Federation will submit the Report of the Commission to the Federal Executive Council and the National Assembly.

Therefore, with the above findings made in this research, the researcher observed that the Commission has greatly impacted in the legislative process in Nigeria and it is recommended that there is the need to review the Law Reform Commission (Repeal and Re-Enactment) Act 2022 to enhance the independence of the Commission towards full actualization of its mandate, reduce the relegation of the Commission and enhance the implementation of the Report of the Commission.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The general purpose of law is to regulate human behavior by protecting lives and properties in the society. The absence of law in a society will result to anarchy and survival of the fittest, hence the need for law. Law reforms within the legal system or in the administration of justice system is to improve the laws by making changes or corrections so that the laws will be in harmony with the constant demands of the time being and desired norms. These goals of improvement of laws can always be achieved by the way of systematic law reforms based on informed political, economic and social needs which reflects the moral values and aspirations of the people living in a global village. When the old law is reformed and then enacted into new one, it has become a social reality. This new law can be said to emanate from the people,[1] but by a constituted government or authority through policy.

Law reform within the legal system or in the administration of justice system is to improve the laws by making changes or corrections so that the laws will be in harmony with the constant demands of the time being and desired democratic norms. There is a relationship between law reform and legislative process. The function of a typical law reform body, whether commission or committee, as it pertains to each jurisdiction, is such which helps to strengthen the legislative process.

This work looks at the jurisprudential meaning of the concept of law reform and its associated principles like law review, law revision, consolidation, amendments, codification, and repeals. It will also analyze the Nigerian Law Reform Commission's (NLRC) organizational structure and its operational procedure, the interrelationships between the work of Nigerian Law Reform

[1] Yahaya Abubakar Muhammad (2016) *Journal of Law, Policy and Globalization* (Vol.55) available on <https://iiste.org/Journals/index.php/JLPG/article/view/34250/35222>, accessed on 17th February, 2021.

Commission and the National Assembly, how the NLRC faired during the military era, the NLRC function within the Nigerian executive arm superstructure, how much work have they carried out since inception and how many have actually been utilized by the National Assembly or the Executive, the laws that resulted from the work of the NLRC, the ongoing research or reform projects in NLRC now. The work also looks at the ways the NLRC has impacted on the overall growth of Nigerian law and the modernization process and the imperative for retaining the NLRC.

1.2 **Statement of the Problem**

It has been discovered that there is a great neglect of the impact of the Nigerian Law Reform Commission as a key justice institution and to legislative processes.[2] Most attention has been given to the legislature and its processes while the Nigerian Law Reform Commission that can greatly impact such process is overlooked, leading to the relegation and neglect of the importance of a law reform commission in growth of Nigerian law and the modernization process, and also the poor implementation of the Report of the Commission. In the course of this research, the writer discovered with sadness that various published works, whether in the form of text book or article, in relation to this work shows the various achievements of the Nigerian Law Reform Commission, yet none has addressed the impact of Nigerian Law Reform Commission on the legislative process, which is the subject of this work.

Sections 4, 5 and 6 of the 1999 Constitution of Nigeria provides for the division of government powers among the legislature, executive and judiciary. The legislature is charged with the obligation of making laws for the maintenance of peace, order and good government of the country. The Law Reform Commission since 1979, through its Act is charged with the mandate to reform, review,

[2] Yahaya Abubakar Muhammad 'The Statutory Role of the Nigerian Law Reform Commission in the Administration of Justice in Nigeria', *Journal of Law, Policy and Globalization* <www.iiste.org> (ISSN 2224-3240) (Paper) (ISSN 2224-3259) (Online) Vol.55, (2016) 217

and codify the laws to bring them in line with best practice. The Commission since its inception up till date has severally carried out reform exercises which has impact in the legislative process and resulted to the eventual enactment of some legislation by the National Assembly. Some of these reform exercises will be appraised by the researcher.

Akin to the subject of this work is the interrelationship between the work of Nigerian Law Reform Commission and the National Assembly. The question of how the NLRC faired during the military era needs to be addressed as well as the NLRC function within the Nigerian executive arm superstructure. It is therefore not out of place to appraise how much work have they carried out since inception and how many have actually been utilized by the National Assembly or the Executive. Again, it is important to know the laws that resulted from the work of the NLRC as well as the ongoing research or reform projects in NLRC now.

Further attempts will be made looking at the function of comparative law and law reform and in what way has NLRC impacted in the overall growth of Nigerian law and the modernization process and the imperative for retaining the NLRC.

1.3. **Research Questions**

This research work attempts to answer the following research questions:

1. To what extent do the Nigerian Law Reform (NLRC) organizational structure and its operational procedure affect its productivity?
2. What is the extent of the interrelationships between the work of Nigerian Law Reform Commission and the National Assembly?
3. To what extent does the NLRC function within the Nigerian executive arm superstructure?

4. What are the ways which the NLRC impacted in the overall growth of Nigerian law and the modernization process?
5. Has there been relegation of the Commission, to what extent has there been poor implementation of the Commission's Report and what is the imperative for retaining the NLRC?

1.4 Aim and Objectives of the Study

The aim of this research work, apart from looking at the jurisprudential meaning of the concept of law reform and its associated principles like law review, law revision, consolidation, amendments, repeals, is to appraise the impact of the Nigerian Law Reform Commission in legislative process by looking at the following objectives:

1. the Nigerian Law Reform Commission (NLRC) organizational structure and its operational procedure;
2. the interrelationships between the work of Nigerian Law Reform Commission and the National Assembly;
3. the NLRC function within the Nigerian executive arm superstructure;
4. the ways which the NLRC impacted in the overall growth of Nigerian law and the modernization process and the imperative for retaining the NLRC;
5. the relegation of the Commission and poor implementation of the Commission's Report.

1.5 **Significance of the Study**

The outcome of this research work will contribute in no small measure to the development Nigerian law and the modernization process. It will lead in a better understanding the Nigerian Law Reform Commission (NLRC) organizational structure and its operational procedure, the interrelationships between the work of Nigerian Law Reform Commission and the National Assembly, how the NLRC faired during the military era, the NLRC function within the Nigerian executive arm superstructure, how much work have they carried out since inception and how many have actually been utilized by the National Assembly or the Executive, the laws that resulted from the work of the NLRC, the ongoing research or reform projects in NLRC now and the imperative for retaining the NLRC. Also, the function of comparative law and law reform and in what way has NLRC impacted in the overall growth of Nigerian law and the modernization process, the relegation of the Commission and the poor implementation of the Commission's Report.

1.6**. Scope and Delimitation of the Study**

The concept of law reform and its impact in legislative processes is a trans-global affair. However, the scope and extent of the theoretical coverage of this research work is an appraisal on the impact of the Nigerian Law Reform Commission in legislative process in Nigeria and interrelationships between the work of Nigerian Law Reform Commission and the National Assembly, how the NLRC faired during the military era, the NLRC function within the Nigerian executive arm superstructure, how much work have they carried out since inception and how many have actually been utilized by the National Assembly or the Executive, the laws that resulted from the work of the NLRC and the ongoing research or reform projects in NLRC now. Also, this work will look at the ways the NLRC impacted in the overall growth of Nigerian law and the modernization process and the imperative for retaining the NLRC. This research work suffers some limitations or setbacks,

namely, paucity of research materials on the defined area of study especially text books, poor electricity to carry out extensive research online and so on. However, the research used some relevant text books, Nigerian Law Reform Journals and Reform Reports by the NLRC, internet materials such as journals and articles to supplement the available materials.

1.7 **Research Methodology**

The research method employed by the researcher in the examination of the research topic is doctrinal approach. Doctrinal research methodology focuses on researching legal prepositions so as to analyse existing laws by relying on case law, statutes, and other literature in law in finding out loopholes from which conclusion is drawn. This work is on the impact of the NLRC to legislative process and analyses were made on statutory provisions while reliance had to be placed on both primary and secondary data. In doing this, materials that discussed the functions of the NLRC were researched on to understand the impact of the NLRC to legislative process. These are mainly from text books and articles in journals, together government reports (secondary sources) which helped to consider the primary sources used in this research. Apart from the text books, the Nigeria Law Reform Commission Act 1979, the Nigeria Law Reform Commission (Repeal and Re-Enactment) Act 2022 and articles in journals which were found in libraries, other primary and secondary materials were collected from the internet. The researcher achieved this using relevant literature search method and Nigerian Law Reform Journals and Reform Reports, internet materials such as journals and articles to supplement the available materials. The area of research work is such which required a comparative analysis that may lead to the review of the Nigerian Law Reform Commission (Repeal and Re-Enactment) Act 2022. As a result of this, the contributions made by the writers and law commissions need to be relied upon to analyse the impact of the NLRC in legislative process.

1.8 **Organizational Layout**

This research work will be organized into five Chapters. Chapter One deals with the general introduction of the nature and scope of the research such as Background of the Study, Statement of the Problem, Aims and Objectives of the Study, Research Question, Significance of the Study, Scope and Limitation of the Study and Research Methodology, Chapter Outline and Summary of Literatures to be reviewed.

Chapter Two focuses on the Nigerian Law Reform Commission: Historical Development, Rationale, Scope and Function. This chapter looks at the Concept of law reform and its associated principles like law review, law revision, consolidation, amendments, codification, repeals, historical development of Law Reform Commission in Nigeria, scope and function of the Nigerian Law Reform Commission, Comparative law and law reform and how the Nigerian Law Reform Commission faired during the military era

Chapter Three focuses on Legislative Process, Its Nature and Procedure, looking at the Legislature and Powers to Make Legislation, types of legislation such as Acts, Laws, Subsidiary Legislation, Legislative Processes its nature and types of legislative bills and Procedure in Making of Legislation.

Chapter Four deals with the impact of Law Reform Commission in legislative process, considering the interrelationships between the work of NLRC and the National Assembly, the NLRC function within the Nigerian executive arm superstructure, the NLRC work since inception and how many have actually been utilized by the National Assembly or the Executive, the laws that resulted from the work of the NLRC, the ongoing research or reform projects in NLRC now, and Impact of the NLRC in the overall growth of Nigerian law and the modernization process and the imperative for

retaining the NLRC, the relegation of the Commission and the poor implementation of the Commission's Report.

Chapter Five contains the Summary of the entire chapters, Conclusion and Recommendations.

1.9 **Literature review**

In the course of this research, some literatures were consulted in trying to gain insight on the impact of the Nigerian Law Reform Commission in legislative process in Nigeria and the Concept of law reform and its associated principles like law review, law revision, consolidation, amendments, codification, repeals, historical Development of Law Reform Commission in Nigeria and interrelationships between the work of Nigerian Law Reform Commission and the National Assembly, how the NLRC faired during the military era, the NLRC function within the Nigerian executive arm superstructure, how much work have they carried out since inception and how many have actually been utilized by the National Assembly or the Executive, the laws that resulted from the work of the NLRC, the ongoing research or reform projects in NLRC, the function of comparative law and law reform and in what way has NLRC impacted in the overall growth of Nigerian law and the modernization process now and the imperative for retaining the NLRC. Moreover, some works by Nigerian law reform commission officers were considered too; and due to the nature of this study, some other foreign authors were also considered especially as regards comparative law. Thus, text books, articles in journals, materials on law reform, reports of the Nigerian Law Reform Commission on the concept of law reform and its associated principles like law review, law revision, consolidation, amendments, codification, repeals, historical Development of Law Reform Commission in Nigeria and interrelationships between the work of Nigerian Law Reform Commission and the National Assembly, how the NLRC faired during the military era, the NLRC function within the Nigerian executive arm superstructure, how much work have they

carried out since inception and how many have actually been utilized by the National Assembly or the Executive, the laws that resulted from the work of the NLRC, the ongoing research or reform projects in NLRC, were all consulted.

The Concept of law reform and its associated principles like law review, law revision, consolidation, amendments, codification, repeals, are difficult to define. Michael Sayer[3] admitted that law reform is notoriously difficult to define. According to him, one reason is that it can refer, widely, to any beneficial change or proposed change in law or, more narrowly, to the process by which such a chance is attempted or accomplished. He went further to state that codification as an aspect of law reform has proved to be tricky, both to achieve and to write about. In fact, that is because it is easy to agree that codification sounds as though it must be a good thing, but difficult to agree on what codification is, or should be, or how it should be done. Jaja & Anyaegbunam[4] admitted that codification of law is a term that is open to many qualifications and description to many people.

A particular book titled Focus on Law Reform (1979-1990) by the Nigerian Law Reform Commission looked at the historical development of Law Reform Commission in Nigeria and its then organizational structure of the NLRC, the reform projects of the NLRC since its inception in 1979 to 1990, how the NLRC faired during the military era and its consultative collaboration with various relevant organisations, associations, institutions, individuals, and the National Assembly. As regards how much work has been carried out since inception and how many have actually been utilised by the National Assembly or the Executive, some articles addressed it. Okonkwo[5] and

[3] 'Law Reform: Challenges and Opportunities' (2009) NLRJ, *Nigerian Institute of Advanced Legal Studies Press, Abuja*, pp.1-28

[4] Jaja, T.C., & Anyaegbunam, E.O (2020), 'Law Reform in Nigeria: A Historical Perspective' *Journal of Law and Legal Reform*, 1(3), (437-444). DOI: <https://doi.org/10.15294/jllr.v1i3.36702> accessed 12th December, 2021.

[5] Okonkwo. C. O, 'The Imperatives of Law Reform in the Law Making Process' (2012) NLRJ, *Nigerian Institute of Advanced Legal Studies Press, Abuja,* pp.1-21.

Anaekwe[6] made a wonderful attempt to show some of the laws that have been utilised by the National Assembly or the Executive. The analysis was drawn from the inception of the NLRC. However, the major issue which was noticed in the course of this research is the implementation of the law reform proposals by the Executives and Legislature. Anaekwe[7] admitted that some of the major factors militating against smooth implementation of reform proposal are loopholes in the founding statue, particularly in respect of the role of the Attorney-General in law reform matters; and thirdly, the absence of infrastructure or machinery in the legislature for passing law reform bills. Ezeobi[8] in analysing the implementation of the law reform proposals echoed that the period 1979-1983 recorded almost the lowest ebb of the Commissions achievement in terms of translating its law reform proposals into legislation by the legislature.

In the course of this research, the Annual Report (at least up till 2020) made by the Nigerian Law Reform Commission was consulted. This material contains the ongoing research or reform projects in NLRC and the various reform projects of the NLRC.

Another relevant article written by Orr[9] titled "law reform and legislative process", examines and evaluates the adequacy of present institutional and other related procedures for law reform in New Zealand. To him any discussion of law reform which fails to take account of the legislative process will be at best incomplete and at worst quite misleading. Well researched and well written reports recommending changes by whomsoever prepared, which lie pigeonholed, constitute a frustrating waste of time and energy and do nothing to reform the law. The critical step is their passage into

[6] Anaekwe W.O, 'Implementation of Law Reform Proposals, the Nigerian Experience' (1996) NLRJ, *Watershed Nigeria Ltd, Lagos*, pp. 1-15

[7] Anaekwe W.O, Ibid

[8] Kodilinye J. Ezeobi, 'Nigerian Law Reform Commission: A Shattered Political Vision or a Dream Come True?' (2013) NLRJ, *Nigerian Institute of Advance Legal Studies Press, Abuja*, pp. 53-68

[9] G. S. Orr, 'Law Reform and the Legislative Process' *Bluebook* (21st ed) *10 VICTORIA U. WELLINGTON L. REV.* 391 (1980).

law. Any appraisal of the relative success or failure of a country's record in law reform must finally be measured in terms of the quality and quantity of enacted legislation.

Dr. Yahaya's article[10] was looked into in the course of this research and he admitted that for smooth delivery of justice in the administration of justice system in Nigeria, the Nigerian Law Reform Commission has a great role to play and undertake the progressive development and reform of substantive and procedural law applicable in Nigeria by way of codification, elimination of anomalous or obsolete laws and general simplification of the law in accordance with general directions issued to it by the government from time to time or on its own initiatives to submit proposals for law reforms to the Attorney General and Minister of Justice for the onward submission to the National Assembly (i.e. Parliament) as executive bills for legislation.

Another important work that was looked into is that of Osunbor[11] in an article titled "Law Reform as a Tool for Economic and Social Development". This article is important to this work as it examined the nature of law and law reform, the objectives of law reform which is to harmonise laws with prevailing societal needs and aspirations, the responsibility for law reform in Nigeria, the roles of the Executive, Judiciary and mass participation in law reform.

Another area of this literature review is on the area of comparative law and law reform. This area is important to this research as the NLRC for the efficient performance of its function may obtain such information as to the legal systems of other countries as appears likely to facilitate the performance of their function under their establishment Act[12]. It then means that the NLRC in carrying law reform may do comparison of the Nigerian laws with other countries law.

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[10] Yahaya Abubakar Muhammad 'The Statutory Role of the Nigerian Law Reform Commission in the Administration of Justice in Nigeria', *Journal of Law, Policy and Globalization* <www.iiste.org> (ISSN 2224-3240) (Paper) (ISSN 2224-3259) (Online) Vol.55, (2016) 217

[11] Osunbor O.A, 'Law Reform as a Tool for Economic and Social Development' (2010) NLRJ, *Institute of Advanced Legal Studies Press, Abuja*, pp.35-50

[12] Section 5(4) Nigerian Law Reform Commission Act 1979 (No.7), Cap. N118 Laws of the Federation of Nigeria (LFN) 2004.

The act of comparison provides insight into another country's law, our own law, and, just as importantly, our own perceptions and intutions - a self-reflection that can often yield insight into our view of the law.[13] Cruz[14] describes comparative law as the systematic study of particular legal traditions and legal rules on a comparative basis. To qualify as a true comparative enterprise, it also requires the comparison of two or more legal system, or two or more legal traditions, or of selected aspects, institutions, or branches of two or more legal systems. The centre of the subject of Marsh[15] work on comparative law and law reform is the extent to which foreign law can be profitably used in the preparation of national legislation, even when the national legislator is under no pressure arising from an actual or contemplated international convention to adopt the foreign pattern of law. Darius Whelan[16] in his thesis "the comparative method and law reform", examines law reform, the comparative method, and the combination of the two elements. He also adopted a broad definition of law reform, to include law reform by legislators and judges.

To Konrad Zweigert and Hein Kotz,[17] the primary aim of comparative law, as of all sciences, is knowledge. If one accepts that legal science includes not only the techniques of interpreting the texts, principles, rules, and standards of a national system, but also the discovery of models for preventing or resolving social conflicts, then it is clear that the method of comparative law can provide a much richer range of model solutions than a legal science devoted to a single nation,

[13] Edward J. Eberle, 'The Method and Role of Comparative Law' *8 WASH. U. GLOBAL STUD. L. REV. 451* (2009), <http://opencholarship.wustl.edu/law_globalstudies/vol8/iss3/2> accessed on 10th January, 2022.

[14] Peter De Cruz, Comparative Law in a Changing World, third edition 2007, Routledge-Cavendish, 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN, p.3

[15] Marsh Norman S, 'Comparative Law and Law Reform' *Rebels Zeitschrift Fur Auslandisches Und Internationales Privatrecht/ The Rabel Journal of Comparative and International Private Law* (Vol.41) (no.4) *Mohr Siebeck GmbH & Co.KG*, (1977), pp. 649-68, <http://www.jstor.org/stable/27876156> accessed 10th January, 2022

[16] Darius Whelan 'The Comparative Method and Law Reform' (1988) <https://www.researchgate.net/publication/255856843_The_Comparative_Method_and_Law_Reform> accessed on 10th January, 2022.

[17] Konrad Zweigert et Hein Kotz, 'An Introduction to Comparative Law' (3e ed) *trad. Par Tony Weir, Oxford University Press* (1998) *Einfuhrung in die Rechtsvergleichung*, (3e ed) *Tubingen, J.C.B. Mohr*, (1996)

simply because the different systems of the world can offer a greater variety of solutions than could be thought up in a lifetime by even the most imaginative jurist who

Prof. Okonkwo's[18] work on "The Imperatives of Law Reform in the Law Making" was also relied on in the course of this research. This material is important to this work as it shows the impact of the NLRC in the overall growth of Nigerian law and the modernization process and the imperative for retaining the NLRC. Okonkwo in his work addressed the advantages of the Law Reform Agency to legislation. Among these are (a) the expertise of the Law Reform Agency like the Commission, over the years have acquired expertise in different branches of the law. The Commission keep abreast of developments in the law, they can easily identify areas of the law which are in need of reform, what reforms should be introduced to take care of identified defects and keep the law in consonance with the needs of the society. (b) Independence from Government and other establishment is another area which the author identified as an advantage of a Law Reform Agency like the Commission. (c) Continuity is also an advantage of a Law Reform Agency in any field of law research and reform.[19] Prof. Okonkwo further stated that a major characteristic of the Commissions reform proposals is that they are usually characterised by inputs from experts, stakeholders and the public.

All the contributions made by the writers are considered with the aim of improving on the already existing literature, while at the same time making a good case for the appraisal of the impact of the Nigerian Law Reform Commission in legislative process in Nigeria

[18] Okonkwo. C. O, 'The Imperatives of Law Reform in the Law Making Process' (2012) NLRJ, *Nigerian Institute of Advanced Legal Studies Press, Abuja* pp.1

[19] Okonkwo. C. O, Ibid 7.

CHAPTER TWO

THE NIGERIAN LAW REFORM COMMISSION: HISTORICAL DEVELOPMENT, RATIONALE, SCOPE AND FUNCTIONS

This Chapter presented the Nigerian Law Reform Commission focusing on the examination of the historical development of Law Reform Commission in Nigeria, its scope and function, the definition of the concept of law reform and its associated principles like law review, law revision, consolidation, amendments, codification and repeals.

2.1. **Concept of law reform and its associated principles**

The Nigerian Law Reform Commission is mandated generally to take and keep under review all Federal Laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of Nigerian society including, in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with changes in the machinery of the administration of justice and generally the simplification and modernization of the law.[20] Before looking at the historical background, rationale, scope and function of the Commission, it is important to define the concept of law reform and its associated principles like law review, law revision, consolidation, amendments, codification and repeals.

2.1.1. **Law Reform**

[20] Section 5 (1) Ibid

The society is not static and as the demands of the people keeps increasing, it affects the society and everything that evolves in the society, such as the laws. The dynamism of a society must influence the law so as to make the law to maintain its moderate influence over society.

The concept of law reform is broad and has various definitions. It actually involves those various changes made in a law, such as consolidation, amendments, codification, repeal etc. "Law reform" is notoriously difficult to define. One reason is that it can refer, widely, to any beneficial change or proposed change in the law or, more narrowly to the process by which such a change is attempted or accomplished."[21]

If our laws were static, they would soon be out of use and some vacuum will be created. So, as society progresses, the laws must progress with it through law reform. It needs also to be stated that law reform is not restricted to mere improvement of laws, as there are instances where it will require a repeal of an existing law and some cases there is no re-enactment of the law[22]. Other cases after repeal a completely new legislation is introduced to replace the old[23]. The issue of repeal will be discussed extensively as a separate sub-heading in this work. Law reform is very critical, indispensable integral part of all reforms in a given society. It is the harbinger of all reforms. Law reform is the precursor to the economic, political and social advancement of any nation. Law reform is a constant process; It never ends.

There are three layers of law reform. And a reform in one particular layer must attract a corresponding reform in the other two areas, in order to achieve the desired impact in our legal system. These three aspects of reform are (1) statutory law reform, (2) administrative law reform

[21] Michael Sayers, Ibid, 2
[22] The Railway Loan (International Bank) Act, 1958 Cap. R2 LFN 2004, is repealed by section 1 of the Railway Loan (International Bank) (Repeal) Act, 2017.
[23] The Standards Organisation of Nigeria Act, 1971 Cap. S9 LFN 2004, is repealed by section 50(1) of Standards Organisation of Nigeria Act No. 14 of 2015.

and (3) judicial law reform. None of these three aspects of reform can comprehensively address the challenges experienced in our legal system without a corresponding reform in the other two.[24] In other words, the three aspects of reform are: (a) executive law reform, (b) legislative law reform and (c) judiciary law reform. Osunbor[25] admitted that the executive exercises its law reform powers through Executive Bills which are presented by the President or Governor for passage as an Act of the National Assembly or Law of a State House of Assembly as the case may be. Typically, a bill may at the federal level, originate from:

(1) The office of the Honourable Attorney-General of the Federation and Minister of Justice, being the product of an in-house or ad hoc law review committee, a Law Revision Committee established by law or the Nigerian Law Reform Commission[26],

(2) Other user Ministry, Department or Agency of Government saddled with responsibility over specialized matters and

(3) The Presidency being the product of a special review committee or panel instituted by him.[27]

The role of the executive in exercise of its reform power cannot be complete without looking at section 315 of the Constitution. Osunbor[28] further admitted that section 315 empowers the "appropriate authority" (the President and Governor) to modify existing Acts of the National

[24] Uduak Victor Robert, 'The Supreme Court as An Agency of Law Reform, The Constitutional Challenges of The Fourth (4th) Republic' <https://www.academia.edu/32901507/THE_SUPREME_COURT_AS_AN_AGENCY_OF_LAW_REFORM_doc> accessed on 15th January, 2022.

[25] Ibid 44

[26] For instance, the Nigerian Law Reform Commission Act provides that "it shall be the duty of the commission generally to undertake and progressive development and reform in consonance with the prevailing norms of Nigerian society…."

[27] Examples of this are the Electoral Reform Bills which emanated from the report of the Hon. Justice M.L. Uwais panel on the Reform of the Electoral Process in Nigerian and the Land Use Act Constitution Amendment Bill which emanated from the Prof. Akin Mobogunje's Committee on the Review of the Land Use Act. Also, the President approved for the Nigerian Law Reform Commission in 2018 to review the LFN 2004.

[28] Ibid 46

Assembly and the Laws of the States respectively, which were in force on 29 May 1999, when the Constitution came into effect (s.315(1)). It provides…

"(2) the appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of the constitution,"

There are two schools of thought here, some has suggested that the President or Governor, pursuant to this section, may amend any law in existence on 29 May 1999, without reference to the Legislature. This group of people like Osunbor[29] takes the view that were this to be the case it would infringe on the doctrine of separation of powers hence an aberration. The sub -section was clearly intended to apply in the transitional period between the inauguration of the new President and his proclamation of the National Assembly in 1999. This view is buttressed by the fact that Part III (Sections 309-319) of the Constitution deals with Transitional Provisions and Savings. Whereas, the other group suggests that the section empowers the President or Governor to make such modifications in the text of an existing law as he considers necessary or expedient to bring that law into conformity with the provisions of the Constitution. This implies that the President or a Governor has been given legislative functions to perform without the assistance of the National Assembly or the appropriate State House of Assembly.[30] In Attorney-General of the Federation v Attorney-General of Abia State & 35 others,[31] the Supreme Court held that the appropriate authority in respect of Cap. 16, a law of the Federation, is the President. Thus, the President has constitutional power, by order, to modify Cap. 16 either by way of addition, alteration, omission or repeal, to

[29] Ibid 46
[30]. Miriam Chinyere Anozie, 'Executive Modification of Existing Laws Under Section 315 of the 1999 Constitution' *The Faculty of Law, University of Nigeria, Enugu Campus* (2002-2010) 9 Nig. J. R. ISSN: 0189 – 4315, https://oer.unn.edu.ng/read/the-nigerian-juridical-review-vol-9-executive-modification-of-existing-laws-under-section-315-of-the-1999-constitution/file.pdf accessed on 1st February, 2022
[31] 15(2002)10 NSCQR p. 163.

bring it into conformity with the Constitution. Section 315 of the Constitution and its variant forms in earlier Constitutions have been construed and applied by the courts in a number of situations. Examples include: a) the adaptation of the Public Order Act, 1979; b) the repeal of the Petroleum (Special) Trust Fund (PTF) Decree 25 of 1994 by President Obasanjo; c) Modification of Allocation of Revenue (Federation Account, etc) Act 1990 as amended by Decree (No. 106) of 1992; d) the amendment of Local Government Laws, and e) the adoption of Sharia law.[32] Although, this work is not to review section 315, the purpose of this area of research is for insight in the reform power of the executive.

The legislative law reform is a Constitutional provision. The Constitution through the vesting provisions in section 4 which gives this power to the National Assembly and State House of Assembly. At the Local government level, this role is played by the legislative arm of the Local Government Council.

Section 4 of the Constitution states:

(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

[32] Miriam Chinyere Anozie, Ibid 114

(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:-

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void.

(6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.

(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:- (a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

In carrying out its legislative law reform mandates, the legislature passes laws which will allow the Government to meet its aspirations as set out under the Fundamental Objectives of State in Part II of the Constitution. A key part of this is the passage of those laws that will allow the government to provide basic healthcare, education, among other things.[33] Whereas the provisions of Chapter II are not justiciable by themselves laws passed in furtherance of them may create and confer enforceable and justiciable rights on citizens.[34] The legislature will be discussed further in this chapter.

The third aspect of law reform is the judiciary law reform. The judiciary primarily is to interpret the law. However the judiciary performs law reform functions through judicial precedent. By espousing and expanding the principles of common law where lacuna exist, judges do thereby engage in law-lawmaking. Where, however, the lacuna or defects exist in legislation judges often avoid being drawn into the task of filling in the gaps. It is the duty of the legislature to respond swiftly to fill those gaps by way of amendment. For instance,[35] following the numerous challenges of the administration of criminal justice in Nigeria and the plethora of Supreme Court decisions on the current delay and need for speedy administration of criminal justice, the recent past 7th Assembly of the National Assembly passed the Administration of Criminal Justice Act (ACJA), 2015.[36]

[33] 'A Century of Lawmaking in Nigeria': 1914 to 2014, (2014) *National Institute for Legislative Studies*, (ISBN: 978-978-53398-0-2), Compiled by Hameed Bobboi and Ladi Hamalil.
[34] Ibid 43
[35] Uduak Victor Robert, Ibid 7
[36] The Administration of Criminal Justice Act, 2015 has 495 Sections and it came into force on 13th May, 2015. The ACJA repealed the Criminal Procedure Act[36] and the Criminal Procedure (Northern States) Act[36] and Administration of Justice Commission Act[36] as applicable in all Federal Courts and Courts in the Federal Capital Territory. The Act regulates more than just criminal justice process; it covers, in most part, the entire criminal justice process from arrest, investigation, trial, custodial matters and sentencing guidelines.

2.1.1.1. **The Objective of Law Reform**

The thinking that understanding the law is the exclusive preserve of some wise-men is archaic and obsolete. This is because knowing the law requires respect for law.[37] The objective of law reform is that of improving and maintaining justice in the law. Also, the objective of law reform is making the law simple and accessible for everyone to understand. The primary objective of law reform is to harmonise laws with the prevailing societal needs and aspirations. The goal of legislation is to promote respect for human rights principles which guarantee individual freedom and to promote political, social and economic advancement of the society. The total well-being of society rests on creating a legal framework which will attract investments and economic prosperity, political and social development will remain elusive and society will continue to suffer upheavals, crime and instability and become trapped in a vicious circle of poverty and under-development. The law reformer must constantly strive to attune laws toward the fundamental objectives and directive principles of state policy as enshrined in the 1999 Constitution of Nigeria (as amended).[38] Although, the provisions of Chapter II are not justiciable by themselves except the law reform proposal is passed into law in furtherance of those Chapter II rights, thereby conferring enforceability and justifiability rights on citizens under same Chapter II.

The various methods in carrying out law reform are law review, law revision, consolidation, amendments, codification and repeals and they will be discussed briefly.

2.1.2. **Law Revision**

[37] Kefas Magaji, Ibid 45
[38] Ibid

This is sometimes referred to as statute law revision or reprint. The definition by Marshall[39] in looking at the purpose of law revision (statute law revision) is adopted, and he admitted that:

> "the purpose of a statute law revision is to prepare and provide for public use an up-to-date set of the statutes in force in a particular territory at a particular territory at a particular date, incorporating all amendments and adoptions made thereto since the previous Revision and eliminating therefrom all repealed, obsolete, spent and other unnecessary matters. This type of law revision must be distinguished from the process of law reform which involves the making of substantive legislative changes in the statute and other law of a territory with a view to its improvement and modernization."

The reason this definition is adopted is that it did not only define the concept of law revision, it also creates a distinction between law revision and law reform. As law reform involves the making of substantive legislative changes in the statute and other law of a territory with a view to its improvement and modernization, which may include changing an entire section of a legislation. Law revision sometimes is confused with law reform. Marshall[40] also admitted this by stating that:

> "…it is therefore unfortunate that the term "law revision" is sometimes used as a synonym for "law reform". For instance, the title "Law Revision Committee" was given to the Committee which was appointed in the United Kingdom by the Lord Chancellor in January 1984, "to consider how far, having regard to the Statute Law and to judicial decisions, such legal maxims and doctrines as the Lord Chancellor may from time to

[39] Marshall, H. H. "Statute Law Revision in the Commonwealth." *The International and Comparative Law Quarterly*, vol. 13, no. 4, Cambridge University Press, 1964, pp. 1407–32, http://www.jstor.org/stable/756930 accessed on 2nd February, 2022
[40] Ibid

time refer to the Committee, require revision in modern conditions." This Committee was in fact a law reform committee…."

It then means that despite a committee may be called "revision committee" it does not make them such as regards is placed on their scope of functions to carryout. Law revision does not involve law reform.

The functions of Law revision are usually carried out by a committee, empowered by a specific legislation. The law revision committee usually has no authority to reform the law. If it comes across matters needing reform, it should bring them to the attention of the appropriate authority. In Nigeria, law revision, as authorised by a legislature[41], is carried out by an ad hoc committee under a chairman of Law Revision Committee who is usually a Supreme Court Judge, and usually at specific intervals of about ten to fifteen years. Law revision exercises were done in Nigeria in 1948, 1958, 1990, and 2001 (for the Laws of Federation of Nigeria 2004)[42] and recently in 2018 the Nigerian Law Reform Commission embarked on law revision which will be discussed more in details subsequently.

Usually, the specific legislation which empowers the law revision exercise is later enacted to bring the new set of statutes into force[43].

[41] See e.g The Revision Edition (Laws of the Federation of Nigeria) Decree (now Act) 1990, No.
[42] Okonkwo, Ibid
[43] See e.g Revised Edition (Laws of the Federation of Nigeria) Act, 2007 which authenticates the LFN, 2004

2.1.3. **Consolidation of Law**

According to Black's law dictionary[44], the word consolidate is to combine or unify into one mass or body. Consolidation of law is the combination into a single statutory measure of various legislative provisions that have previously been scattered in different statutes. Therefore, is the act of combining two or more separate laws on the same subject into a single statute. Consolidation goes further to restructure the words of a law with the view to make same shorter, clearer and more accessible.[45] Consolidation, also called informal codification. Consolidation is, in fact, a kind of republication of a legislative text.[46]

Over a period of time a statute may be amended in various aspects, or other statutes bearing on time a statute may be amended in various aspects, or other statutes bearing on the same subject may be enacted. The result is that you have a number of statutes relating to the same subject. This makes reference burdensome.[47] The purpose of consolidating legislation is to improve access to the law. This is done both by bringing together all or most of the (generally primary) legislation on a specific subject so that it can easily be found, and by modernising the form and drafting of the law to make it easier to understand and apply. Consolidating the law generally involves bringing all legislation on a particular topic together, better incorporating amendments made to legislation after it has been enacted and modernising the language, drafting style and structure.[48] It bears the same connotation

[44] Ibid 327
[45] Jaja, T.C., & Anyaegbunam, Ibid 441
[46] Wim Voermans, Chris Moll, Nico Florijn and Peter van Lochem, 'Codification and consolidation in Europe as means to untie red tape', *Statute Law Review* (2008) https://www.researchgate.net/profile/Nico-Florijn/publication/228168151_Codification_and_Consolidation_in_Europe_as_Means_to_Untie_Red_Tape/links/0f31752f3826219481000000/Codification-and-Consolidation-in-Europe-as-Means-to-Untie-Red-Tape.pdf accessed on 2nd February, 2022.
[47] Ibid 5
[48] The future of Welsh law: classification, consolidation, codification, Welsh Government Consultation Document, https://gov.wales/sites/default/files/consultations/2019-10/the-future-of-welsh-law-consultation-document_1.pdf, accessed on 2nd February, 2022

with codification but differs in the sense that it advances into editing and restructuring of the words of the statutes for clearer and better usage. Law revision can be adjudged as consolidation of laws.[49]

Wim Voermans, Chris Moll, Nico Florijn and Peter van Lochem, analysed[50] four types of consolidation, thus:

1. **Consolidation as Part of the Promulgation Process (Consolidation on promulgation)**

According to the amended Official Journal Act (2006) in Slovenia, Acts of Parliament which amend other acts are promulgated in a consolidated form, both electronically and on paper. The consolidated text, published in this way, is the official and authentic text of that act. To allow for this 'integrated promulgation', the legislative procedure itself has been changed. Previously amending acts enacted by Parliament entered into force eight days after the publication of the text in the Official Journal. According to the new procedure, upon the enactment of an amendment, the Legislative Office of the Parliament prepares a consolidated version of the act in which the amending articles are integrated into the basic act. This consolidated version is then submitted to the next session or meeting of Parliament for confirmation and subsequent promulgation. This elegant procedure works in two ways. It allows for maximum accessibility and readability of the law on the one hand, and evades problems of legal force and legal authenticity of a consolidated act on the other. Because the original legislator is invited to confirm the effects of an amendment to the basic text, a consolidated text can truly be said to express the original will of the legislator. Denmark also has a system that tries to kill two birds with one stone. Ministers – who are the designated authorities to publish consolidated versions of legislation (see under point II) – are encouraged to publish these consolidated versions of legislation as soon as possible after the

[49] Ibid 441
[50] Ibid 11-14

enactment of any amendments made to an Act. Amendments and the consolidated text may then be published in the same edition of the Official Journal (Lovtidende).

2. **Consolidation with the purpose of 'updating', to be decided case by case (Consolidation on convenience)**

This type of consolidation is the most common one. Most of the time the decision to consolidate an Act rest in the hands of an Official Publisher (typically the publisher of the State Gazette, Official Journal, Official Bulletin, etc.) who decides on a case-by-case basis whether consolidation is due. These publishers may be public organizations or private companies. It is generally considered good legislative practice to publish a consolidated version when an Act is amended to such a degree that access to the relevant legislation is impeded. In Portugal publication of a consolidated text is mandatory in some cases. In some countries (e.g. Estonia) the consolidated version of an Act is published in the State Gazette (Riigi Teataja) on the occasion of the promulgation of the amendments made to that Act. Most of the time consolidation consists of a re-publication of the consolidated text, integrating all subsequent amendments made to an Act. Original recitals and preambles of amending acts are lost in the process of consolidation, but for the rest all parts of the original basic Act and the amendments made to it, which are still in force, are included in the consolidated text. In most countries changes to the wording, structure or any other part or element of the basic text on the occasion of consolidation is strictly forbidden. Some countries, like Italy and Poland, work with a system of 'official' consolidation. This is a system whereby the President of the Council and the minister responsible have to agree on a consolidated text. When they agree, the text is published (testi aggiornati – updated text) in the Official Journal, indicating in bold face or italics where the original text of the basic act was amended. Though the consolidation is official, it does not have legal effect in Italy. In Poland, however, official consolidations are binding, but do

not substitute the original acts, as codification would do. Other Member States leave consolidation to the competent ministers as well (e.g. Denmark) or authorize high ranking public authorities.

3. Consolidation with orthographic correction, restructuring or renumbering

Consolidation typically is technical and does not affect the content of the original legislative act. In some countries, though, authorities responsible for consolidation are on occasion authorized to renumber the consolidated text or to correct (minor) spelling mistakes. This kind of 'authorized' republication or reprint comes in different forms and shapes. However, it is different from the 'actes rectificatifs' we know for instance in community law.[51] Those latter 'actes' are separate amending acts.

4. Electronic consolidation

Quite a few countries involved in the survey seem to have resorted to forms of electronic consolidation in the past years. In most countries electronic publication is a good practice, while in other countries, especially Belgium,[52] electronic promulgation is required by law. Other countries are considering to take that route as well.[53] Electronic promulgation promises to improve the accessibility and comprehensibility of legislation immensely. Especially the possibility of linking the processes of drafting, enactment, promulgation and consolidation – which is feasible in an electronic environment[54] – can improve the pace of consolidation, keep the legislative corpus up-to-date, help the legal and authentic effect of consolidated texts, and, moreover, strengthen the accessibility and readability of legislation. Most countries in the research did not yet make the step to mandatory electronic promulgation. This may be caused by the fact that the demand for

[51] See for instance II.7 of the Commissions Legislative Drafting Manual.
[52] Paragraphs 472-478 Program Law of 12 December 2002, as modified by par. 4 through 8 of the Law of 20 juli 2005 containing various provisions. Belgium did not partake in the survey.
[53] Draft proposal for an Act on Electronic Promulgation. Dutch Ministry of the Interior and Kingdom Relations, April 2006. Draft proposal for an Act on Electronic Promulgation. Dutch Ministry of the Interior and Kingdom Relations, April 2006.
[54] See T. Arnold-Moore, Public access to legislation and the democratic process, RegelMaat 2004, 5, p. 161 ff.

consolidated electronic versions is supplied for by private companies. For instance, in Hungary an estimated 90% of legal practitioners use a database (and spin-off CD's) called Complex. Although not an official version, the texts from the database are valued highly because they are accurate and up-to-date. In Latvia and Bulgaria the task of consolidation also seems to be performed well by the private sector. The Latvian rapporteur reported that there are plans to reform the system and charge the publisher of the Official Gazette with the task of consolidation.

2.1.4. **Amendments**

Change and improvement cannot be affected without legislation. 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.*

Professor C. O. Okonkwo, SAN July 16 – 17, 2012 in Abuja[55]

Amendment of law is an addition or alteration made to a constitution, statute, or legislative bill or resolution. Amendments can be made to existing constitutions and statutes and are also commonly made to bills in the course of their passage through a legislature.[56]

According to Black's Law Dictionary, amendment is a formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specif., a change made by addition, deletion, or corrections; esp., an alteration in wording. In summary, an amendment of law is a change to the wording of a Bill or a motion that is proposed by the legislature or a change in an existing legislation. For a bicameral system of legislature[57] like Nigeria, when a Bill has been passed

[55] Jaja, T.C., & Anyaegbunam, Ibid 438
[56] <https://www.britannica.com/topic/amendment> accessed on 2nd February, 2022
[57] bicameral system, also called bicameralism, is a system of government in which the legislature comprises two houses. In Nigeria, we have the Senate and House of Representative

by one House, it is sent to the other House. There are cases such bill is then amended by the other House; those amendments must be considered by the first House. There may be some to-ing and fro-ing between the Houses before a final version of the Bill is agreed. Again, when the final version is passed and accented by the President, as the case may be, and there is a manifest defect and it then means that law has become liable to amendment soon after coming into force.

Amendment could be by way of adding or inserting[58], striking out[59], or striking out and inserting[60], or by substituting[61].

The procedure of amendment of a law varies. Some laws make provisions for the procedure to amend it. For instance, the 1999 Constitution of the Federal Republic of Nigeria makes provision in section 9 the procedure for its amendment. The Constitution provides that an amendment may be proposed with a two-thirds majority vote in both the Senate and the House of Representatives. The 1999 Constitution of Federal Republic of Nigeria clearly took a cue from the United States model going by the Federal structure of government, the presidential system of government and the amendment process respectively. Article V of the United States Constitution clearly states the procedure for amending the US Constitution as well as its ratification. It requires that two-thirds votes of members of the Senate and House of Representatives propose such amendment followed by a ratification of three-fourths of the various State Legislatures. An alternative method is that two-thirds of the State Legislatures calls a convention for such purpose, which would be followed by a ratification of proposed amendments from the convention by three-fourths of the State

[58] Amendment that places new wording at the end of a motion or paragraph or other readily divisible part within a motion or by placing new wording within or around a motion's current wording.
[59] An amendment that removes wording from a motion's current wording.
[60] An amendment that removes wording from a motion's current wording and replaces it with alternative wording. The motion can properly apply only to inserting wording in place of wording being struck out; it cannot strike out some wording and insert new wording in a different place.
[61] A special type of amendment by striking out and inserting that replaces an entire main motion or a paragraph or other readily divisible part within main motion.

Legislatures. Although thousands of proposals for amendment have been made to the US Constitution, only 27 amendments have been ratified.[62] A case a law makes reference to a provision in another law, and that provision in that other law is amended, then it is implied that that law is amended. Section 4. (1) of the Nigerian Interpretation Act 1964[63], provides:

A reference in an enactment to another enactment shall, if the other enactment has been amended, be construed as a reference to the other enactment as amended.

Where there is an amendment to a law, the amendment is usually consolidated into the main or principal Act during a law revision exercise.

2.1.5. **Codification**

The background to codification and its motivation is the realization of the need to eliminate the shortcomings stemming from diverse and universal juridical and historical phenomena, such as the proliferation of legal provisions scattered in different literary sources, the awkward and heterogeneous style of legal directives, and the gradual accumulation of conflicting legal norms within a particular legal system. Furthermore, a codification constitutes the authoritative source for locating any law forming part of a particular legal branch, its directives having the effect of abrogating any other provision of the said branch of the law preceding the codification and inconsistent with it. The hope of the initiators of the great codifications (beginning from the middle of the 18th century, such as the Prussian and Napoleonic Codes) was that such codification would simplify the law and make it understandable and readily available to every citizen.[64]

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[62] 'A Step-By-Step Guide to The Process of Amending the Nigerian Constitution', *Policy and Legal Advocacy Centre (PLAC)*, https://placng.org/i/wp-content/uploads/2019/12/Step-by-Step-Guide-to-the-process-of-Amending-the-Nigerian-Constitution.pdf accessed 2nd February, 2022

[63] Cap.I23 LFN 2004

[64] <https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/codification-law> accessed on 19th January, 2022

According to Black's Law Dictionary[65] it is the process of compiling, arranging, and systematizing the laws of a given jurisdiction, or of a discrete branch of law, into an ordered code. Despite the above definition, codification of law is a term that is open to many qualifications and description to many people. Sayer[66] admitted that codification means different things to different people. This aspect of law reform has proved to be tricky, both to achieve and to write about. At its simplest, it may be no more than the reduction to statutory rules of a relatively confined area of common law. If the area is small, the result may be a relatively simple set of statutory provisions. The Occupiers' Liability Act 1957 C31 (UK) is often regarded as a prime example. But for many codifications is a more ambitious, and inevitably less attainable dream. For them, it represents the desire to reduce the whole body of the law, or very large tracts of it, to a simple set of clearly expressed principles.

The Nigerian Criminal Code is a good example of codification[67]. It is the reduction of unwritten common law of crimes into a statute – the Criminal Code Act, now Cap. C38 LFN 2004. There was an attempt by the former Anambra State to codify the law of torts and the law of contract. The work had gone along way when it was abandoned.[68]

Jaja, quoting (Nwabueze 2017) wrote that we must advert our minds to the Roman legacy through the Code of Justinian of 529AD, which codified all existing legislation from the time of Emperor Hadrian, 117 – 138AD. It was chosen as the baseline with modification necessary to "purge the errors and contradictions, to retrench whatever was obsolete or superfluous", retaining only such laws as were "wise and salutary and best adopted to the practice of the tribunals and the use of the people"[69]

[65] Ibid 275
[66] Ibid 3
[67] See also the Occupiers Liability Act of 1957 and the Company and Allied Matters Act.
[68] Okonkwo Ibid 7
[69] Jaja, T.C., & Anyaegbunam, Ibid 440

An advantage of codification is that the law is stated clearly, authoritatively, comprehensively and is readily ascertainable. A disadvantage is that codified law does not change or adapt to societal needs except through amending legislation.[70] Again, one of the most compelling objections to codification is that a statutory code is less able to evolve with society than common law.

If it is determined that the law should not be codified, an option would be to consolidate the law. Consolidation as discussed above, involves bring together all related statutory provisions in one statute or in a group of statutes.[71]

2.1.6. **Repeals**

Because legislation, as a general rule, cannot be put to an end by mere disuse, repeals of legislation when intended becomes a significant part of legislative function. Many jurisdictions have provided in their interpretation legislation how repeals and amendments should be construed. The purpose of such provisions is to provide in interpretation legislation the effects of repeals and amendments in legislation. Generally, both the interpretation legislation of Nigeria, the UK, Canada, New Zealand and Australia have similar provisions with some little variations, all providing what effect a repeal or an amendment would have in other legislation.

Section 6(1) of the Nigerian Interpretation Act 1964 which provides in so many ways to the effect that the repeal of an enactment does not change anything previously done or actions already taken in respect of the repealed enactment has been provided for by other jurisdictions. Section 8 of the Australian Acts Interpretation Act 1901 as amended in 2011, section 43 of the Canada Interpretation Act 1985, section 28 of the Nauruan Interpretation Act 2011, and section 16(1) of the UK

[70] Ibid 6
[71] Ibid 4

Interpretation Act 1978 all made similar provisions as section 6(1) of the Nigerian Interpretation Act.

Sections 17 and 18 of the New Zealand Interpretation Act 1999 also made provisions in the like of section 6 of the Nigerian Interpretation Act and other Acts of similar provisions. But section 17(1)(d) of the said Act provides something different on effects of repeal generally. It provides that the repeal of an enactment does not affect an amendment made by the enactment to another enactment. While section 17 of the New Zealand Interpretation Act provides that repeal does not change anything already done on the repealed enactment, it provides in section 17(d) that repeal does not also affect an amendment made by the enactment to another enactment. The South African Law Reform Commission stated that including a paragraph such as section 17(d) will avoid the need for savings provisions, even though those amendments made by an Act to other Acts that are not intended to survive repeal will have to be considered separately and specific provisions made for them.[72]

In general, the term repeal stands for to cancel or to revoke. But in the context of law, it means to "abolish statutes". Repeal of statutes means the abolition of the law, and once if any statute is abolished then it is considered void and possesses no effects.[73] According to Black's Law Dictionary[74], repeal means abrogation of an existing law by legislative act. Just as the Legislature has the power to enact laws, similarly it has the power to repeal laws. The efficacy of the Legislature depends upon the possession of the power to repeal the existing law, for without this attribute the power to enact would be a nullity, and the body of the law a series of contradictory enactments. Consequently, the legislative power to repeal prior laws is not inhibited by any constitutional

[72] South African Law Reform Commission, Discussion Paper 112 (2006), op. cit. p 225
[73] Suryansh Singh, 'Important pointers you must know about Effects of Repealing Statutes', https://blog.ipleaders.in/effects-of-repealing-statutes/ accessed on 2nd February, 2022.
[74] Ibid 1325

prohibitions, but exists as a necessary part and increment of the legislative power and function. No statute can make itself secure against repeal. There is nothing to prevent any Parliament from enacting that a particular statute shall never in any circumstances be altered or abrogated. It is within the power of any Parliament to repeal any of the Acts passed by its predecessors and that it is not within the power of any Parliament to prevent the repeal of any of its own Acts, or to bind its successors.[75] It then means that the purposes of repealing a law is where the law is spent, obsolete and unnecessary in our laws.

2.1.6.1. **Two Types of Repeal**

Repeal of law is of two types, Express repeal and Implied repeal, thus:

Express repeal means a repeal by specific declaration in a new statute or main motion.[76] It is an expression which means the abolition of the previously enacted statute by the newly enacted provisions of a statute through expressed words embedded under the new statute enacted. The statute which has been repealed is called repealed statute and the one which replaces the earlier statute is called the repealing statute. In general, when an earlier statute or some of its provisions are repealed through express words embedded under the newly enacted statute stating that the provisions are now of no effect is called the express repeal. For instance, section 1 of the Railway Loan (International Bank) (Repeal) Act, 2017 expressly repealed the Railway Loan (International Bank) Act, 1958.[77] Where there is an express repeal, the effect is that there must be a repealing statute, the earlier statute must be repealed by the new enacting or repealing statute, and the enacted statute must have clear intention showing the effect of the repeal. Whereas, an Implied repeal means

[75] Lok Sabha Secretariat, 'Repeal of Statutes: Current Position' *Parliament Library and Reference, Research, Documentation and Information Service (Larrdis) Members' Reference Service,* p.2 <http://parliamentlibraryindia.nic.in/writereaddata/Library/Reference%20Notes/repeal.pdf>
[76] Ibid 1325
[77] Cap. R2 LFN 2004

repeal by irreconcilable conflict between an old law and a more recent law.[78] when a statute becomes obsolete and it is inferred that it is no longer and shall be repealed with the newly enacted statute then this process of repealing is called implied repeal.

Where an enactment is repealed and another enactment is substituted for it, then-

(a) the repealed enactment shall remain in force until the substituted enactment comes into force;
(b) any reference to the repealed enactment shall, after the substituted enactment comes into force, be construed as a reference to the substituted enactment;

(c) any subsidiary instrument in force by virtue of the repealed enactment shall, so far as the instrument is not inconsistent with the substituted enactment, continue in force as if made in pursuance of the substituted enactment.[79]

2.1.6.2. **Effect of Repeals on Enactment**

The effect of repeals is that the repeal of an enactment shall not-

(a) revive anything not in force or existing at the time when the repeal takes effect;

(b) affect the previous operation of the enactment or anything duly done or suffered under the enactment;

(c) affect any right, privilege, obligation or liability accrued or incurred under the enactment;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment;

[78] Ibid 1325
[79] Section 4(2) Cap.I23 LFN 2004

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed.[80]

2.2. **Historical Development of Law Reform Commission in Nigeria.**

Law refers to a system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties. It is a system of rules that govern a society with the intention of maintaining social order, upholding justice and peaceful co-existence (Magji & Okorie 2017).[81]

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. Until the late seventies, there was no Law Reform Agency in Nigeria. Various institutions and committee were engaged in law reform: it was the practice for government ministries or departments to set up ad hoc bodies and charge them with law reform tasks (though the practice has not completely stopped). [82]

Prior to the establishment of the Commission in 1979, various Government establishments at both State and Federal levels carried out Law reform through the medium of Ad-hoc Committees and Commissions. This arrangement lacked coherence and coordination and failed to adequately confront the task of law reform. In particular, some of the circumstances which appeared daunting included the following:

[80] Ibid section 6 (1)
[81] Ibid 439
[82] Ibid 46

(a) where the subject of reform did not readily fall under the purview of one particular Government Department or Ministry;

(b) where the subject of reform raised issues and the Government, Departments, or stakeholders took contending positions regarding the desired reform, and only a dispassionate consideration by an independent agency could facilitate the reform;

(c) where the subject of the reform involved issues which are beyond the ordinary business of the Government; and

(d) Where the subject of reform required the devotion of considerable time and in-depth research effort.

Beyond these considerations, the establishment of Nigerian Law Reform Commission was in itself an implementation of one of the resolutions of the 1960 meeting of Heads of Governments of the Commonwealth Association. Since its establishment, the Commission has not only provided services to State Governments which facilitated the creation of State Law Reform Agencies but also played vital roles in reform of State Laws, particularly in the following instances:

(a) where the subject of Reform was a law common to some or all States and it was more convenient and more economical for the Commission to conduct a single reform exercise. For example, the Commission conducted a reform on pre-1900 English statutes of general application and prepared 20 draft model laws which many states of the Federation have since enacted;

(b) where the subjects of Reform deserve uniformity of legislation among the State and there was need for a model law that the States could adopt. For example, in 1984, the Commission

produced the Uniform High Court (Civil Procedure) Rules for State High Courts, which a considerable number of States adopted wholly or substantially.[83]

The Nigerian Law Reform Commission was established by the Nigerian Law Reform Commission Act 1979 (No. 7) then it was Cap. 313, Laws of Nigeria 1990[84]. Section 5(1) of the Act provides that subject to the provision of that section –

(1) Subject to the following provisions of this section, it shall be the duty of the Commission generally to take and keep under review all Federal laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of Nigerian society including, in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with changes in the machinery of the administration of justice and generally the simplification and modernisation of the law.

Under section 2 of the Nigerian Law Reform Commission Act 1979 before the Act was amended in 1985, the Commission was to consist of four full time members one of whom was to be the Chairman, and three part-time members. In making the appointments, it was necessary to take into account the need for expertise not only in the common law, but also in Islamic law and in customary law.

The first Commission

[83] Nigerian Law Reform Commission Annual Report for the year 2019, <http://nlrc.gov.ng/documents/ANNUAL%20REPORT%202019%20%20CORRECTION.pdf> accessed on 12th January, 2022.
[84] But now Cap. N118

Between 1979 and 1984, the members of the first Commission were as follows-

(1) Hon. Sir Darnley Alexander, a retired Chief justice of Nigeria as the first chairman.

(2) Dr. S.N.C. Obi, as a full-time member

(3) Dr. Ahmed Beita Yusuf, as a full-time member,

(4) Mrs. T.M.Osindero, as a full-time member,

(5) Dr. Aliyu Abubakar, as a full-time member,

(6) Prof. R.O. Ekundare, as a part-time member,

(7) Dr. E.E.J. Okereke, as a part-time member.

The Secretary to the Commission was Mr. T.N. Nnadi who resigned his appointment on 1st October, 1983. Alhaji Aminu Katsina was then appointed Secretary to the Commission on 22nd February, 1984.[85]

The Second Commission

In 1985, the Nigerian Law Reform Commission Act was amended so that the Commission will consist of four full time Commissioners and no part time Commissioners. Accordingly, the Commission was reconstituted and in July 1985, a new Commission was inaugurated by the Head of Federal Military Government. The new members were as follows:

(1) Hon. Sir Darnley Alexander, as the Chairman.

(2) Dr. S.N.C. Obi, as a member

(3) Hon. Dr. J. Olakunle Orojo, as a member.

(4) Alhaji Usman D. Bungudu, as a member.[86]

[85] Focus on Law Reform (1979-1990), Nigerian Law Reform Commission, p. 2
[86] Ibid 6

The Third Commission

The Second Commission was dissolved on 30th June, 1988 and reconstituted with effect from 1st July, 1988. The members of the new Commission were as follows:

(1) Hon. Dr. J. Olakunle Orojo, as the Chairman

(2) Alhaji Usman D. Bungudu, as a member.

(3) Hon. Mr. Owen Fiebei, as member,

(4) Mr. Chikezie N. Wachukwu, as a member.

Although, Hon. Mr. Owen Fiebei, as member of Commission did not take up his appointment, thus leaving the Commission to operate with three members, whereas, Alhaji Aminu I. Kastina continued as Secretary to the Commission. Early in 1990, Commissioner Alhaji Usman D. Bunguduy resigned his appointment having been appointed Chairman of the Sokoto State Law Reform Commission. Dr. K.S. Chukkol of the Faculty of Law, Ahmadu Bello University was appointed in his place.

Earlier on, at the end of 1989, the Secretary, Alhaji Aminu I. Katsina had left the Commission having been appointed a Khadi of the Katsina State Sharia Court of Appeal. In his place, Alhaji Lawan Abba Nguru was appointed Secretary and he assumed duty in February, 1990.

For the year 1990, therefore, the Commission consisted of the following-

(1) Hon. Dr. Olakunle Orojo, C.O.N., as Chairman

(2) Mr. Chikezie N. Wachukwu, as Commissioner,

(3) Dr. kharisu S. Chukkol, as Commissioner,

Since 1986, it has been the practice of the Commission to assign responsibility to Commissioners to oversee Departments and Divisions while the Chairman coordinates and oversees the work of

the Commission generally.[87] Although, the Commissioners are assigned with the responsibilities to oversee the departments, the various Directors are allowed to run the day-to-day activities of each department. The Nigerian Law Reform Commission Act was amended in 1999 to provide for the appointment of a Secretary to the Commission by the President, on the recommendation of the Honourable Attorney-General of the Federation and Minister of Justice. Section 8(1) of the Nigerian Law Reform Act created the office of the secretary to the commission. The Secretary is to assist the Honourable Chairman with the day-to-day administration and management and any other such duties as may be directed from time to time by the commission.[88]

2.3. **Scope and Function of the Nigerian Law Reform Commission.**

A major innovation in the legal world over the last 40years has been the establishment and development of Law Reform Agencies (LRAs). As seen above, law reform can be done by Government itself through ad hoc committees set up for specific issues. It may be done by the legislature itself using committees established by it. The courts are also involved in some measures of law reform through decisions rendered by the highest courts.[89] Although, the various bodies may perform the function of law reform, yet the most accepted option for law reform is that which is performed either through a Law Reform Agency (LRA), Law Reform Commission, Law Reform Commission, Law Commission or Law Review Committee, as the case maybe, depending on the jurisdiction. In Nigeria, we have the Nigerian Law Reform Commission.

[87] Ibid 10
[88] Ibid 9
[89] Ibid 6

The functions of the Commission are mainly contained in sections 5 and 7 of the Act.[90] The functions of the Commission cumulate its mandates. The functions of the Commission include generally:

> "…to take and keep under review all Federal Laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of Nigerian society including, in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with changes in the machinery of the administration of justice and generally the simplification and modernization of the law."

To discharge its statutory functions, the Nigerian Law Reform Commission receives and considers any proposals for the reform of the law which may be made or referred to it by the Attorney-General of the Federation.[91] The Commission not being a law-making body, means that its proposal for reform must be laid before the President by the Attorney-General. The President thereafter submits it to the Federal Executive Council and after which it is submitted to the legislature as an Executive Bill. This procedure is modeled after the British system, but the difference is that, in Britain the Prime Minister and the Attorney General are members of the Parliament. In Nigeria however, neither the President nor the Attorney General is a member of the National Assembly.[92]

The Commission its own initiative, may also prepare a reform proposal and submit to the Attorney-General from time to time, and such proposals maybe programmes for the examination of different

[90] Cap. N118 LFN 2004.
[91] Section 5(2)(a)
[92] Ibid 47

branches of the law with a view to reform those laws to bring them in line with global best practice[93]. The Commission also, pursuant to any recommendations approved by the Attorney-General, examines any particular branches of the law and the formulate draft legislation or otherwise, of proposals for reform in that particular branch of the law.[94] It also, at the request of the Attorney-General, prepare comprehensive programmes of consolidation and statute law revision, and undertake the preparation of draft legislation pursuant to any such programme approved by the Attorney-General.[95] Consolidation as stated earlier means the bringing together of separate laws (on same subject). It is the combination of a number of independent enactments into a single statute. Whereas, law revision refers to the updating of the existing set of applicable laws in a particular territory by incorporating all amendments and adaptations made to the statutes since their publication and eliminating all repealed, obsolete, spent and other unnecessary laws and matters[96]. The Nigerian Law Reform Commission recently, as approved by the Federal Government through the Attorney-General, had embarked on the revision of all the laws of the Federation which also, incudes the consolidation of laws. The Commission also may advice the Federal Government departments and other authorities or bodies concerned, at the instance of the Federal Government, with proposals for the reform or amendment of any branch of the law.[97] For instance, where the laws setting up a particular government department or authority, are obsolete, spent, the Commission may make proposals for the reform or amendment of such law. For the purpose of the efficient performance of its functions, the Commission may, carryout a comparative analysis of other jurisdiction or legal systems of other countries in order to obtain such information as to the as

[93] Section 5(2)(b)
[94] Section 5(2)(c)
[95] Section 5(2)(d)
[96] Kefas .M.Magaji and P.C.Okorie 'Amendment of Legislation, Law Review and Law Reform' Paper Presented at The Regional Training on Translating Policy Into Legislation: Techniques For Drafting Legislative Bills for Parliamentary Staff Of Ecowas Member States On July 6, 2017 At Ecowas Parliament, Abuja.
[97] Section 5 (2)(e)

appears to it likely to facilitate the performance of any such function. Most of these issues will be dealt with in below in a subsequent topic 'Comparative law and law reform'. The Commission in performance of its function as a law reform agent, may conduct seminars or hold such public sittings, where appropriate, concerning any programme for law reform as it may consider necessary and the Attorney-General shall lay before the President any programmes prepared by the Commission and any Proposals for reform formulated by the Commission pursuant to such programmes.[98]

The functions of the Commission are not restricted to reform Federal laws, as they may also consider proposals for reform of state laws from any state, group of states or all the states in the Federation and submit reports to the appropriate Attorney-General or Attorneys-General.[99] The Commission on its own initiative or upon request from any state or states, consider or put forward proposals for the consideration of the States' Attorneys-General, or such number of them as may be appropriate in the circumstances, for uniformity between the laws of the states or, as the case may require, the group of states concerned. In such situation of request by state or states the financial burden shall be borne by the Government of the state concerned or as the case may be, the Governments of the States concerned.[100]

[98] Section 5(5)and(6)
[99] Section 7 (1)
[100] Section 7(2) and (3)

2.3.1. **Comparative Law and Law Reform**

The establishment of law reform agencies in Nigeria has brought about more co-ordinated and informed law reform process, because the agencies in their reform exercises take into account other existing related legislations and the international perspective and best practices on the subject.[101]

In previous definition, we have seen the meaning of law reform. Here we will attempt to look at comparative law. There have been various definitions as to what comparative law entails. Simply stated, comparative law means the application of the comparative technique to the field of law.[102] Black's Law Dictionary defines Comparative Law as "the scholarly study of the similarities and differences between the legal systems of different jurisdictions."[103] The field of Comparative Law originated in legal reform activities in the nineteenth century, the year of World Exhibition. At this brilliant panorama of human achievement there were naturally innumerable congresses, and the great French scholars EDOUARD LAMBERT and RAYMOND SALEILLES took the opportunity to found an International Congress for Comparative Law. The science of comparative law, or at any rate its method, was greatly advance by the occurrence of this congress, and the views expressed at it have led to a wealth of productive research in this branch of legal study. Comparative law has developed continuously since then, despite great changes in man's attitude towards existence.[104] Comparative Law is often applicable to many practical uses, a number of which are relevant to

[101] Ibid 46
[102] Marie Luce Paris, 'The Comparative Method in Legal Research: The Art of Justifying Choices', *University College Dublin UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No.09/2016,* <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2798643_code1199484.pdf?abstractid=2798643&mirid=1> accessed on 7th February, 2022.
[103] Ibid 300
[104] Ibid 2-3

Nigeria, Kenya, South Africa, Namibia, Ivory Coast, Egypt, Morocco, and Algeria.[105] In Nigeria, the Nigerian Law Reform Commission Act, section 5(4) states thus:

'For the purpose of the efficient performance of its functions under this Act, the Commission may, from time to time, obtain such information as to the legal systems of other countries as appears to it likely to facilitate the performance of any such function'.

The above section shows the essence of comparative law in law reform by the Commission. The essence of comparative law is comparing the law of one country against that of another. The act of comparison requires a careful consideration of the similarities and differences between multiple legal data points, and then using these measurements to understand the content and range of the legal material under observation.[106] The aim is to compare the legal systems of different nations. It suggests that the Commission while carrying out its reform function, adopts of some solutions to some problems arrived at in another legal system, so long as it would be functional in Nigeria, despite its foreignness. To Konrad Zweigert and Hein Kotz,[107] if comparative analysis suggests the adoption of a particular solution to a problem arrived at in another system one cannot reject the proposal simply because the solution is foreign and *ipso facto* unacceptable. To those who object to the 'foreignness' of importations, Rudolph v. Jhering has given the conclusive answer:

'The reception of foreign legal institutions is not a matter of nationality, but of usefulness and need. No one bothers to fetch a thing from afar when he has one as good or better at home, but only a

[105] Okeke, Chris Nwachukwu (2011) "African Law in Comparative Law: Does Comparativism Have Worth*?," Roger Williams University Law Review:* Vol. 16: Iss. 1, Article 1. <http://docs.rwu.edu/rwu_LR/vol16/iss1/1> accessed on 7th February, 2022.
[106] Ibid 460
[107] Ibid 17

fool would refuse quinine just because it didn't grow in his back garden.' (Geist des romischen Rechts, Part I (9th edn., 1955) 8 f.)

In process of adopting a foreign legal system, the two questions which the Commission must asked are: first, whether it has proved satisfactory in that other legal system, and secondly, whether it will work in Nigeria as it is proposed. The second question is as to 'functionality'. The concept of functionality is to the effect that if you copy a legislation from another legal system, you need to verify those aspects that will be functional in that legal system you are importing into. Also, the copied concept needs modification to the extent of its functionality in that system it is being copied into. It may well prove impossible to adopt, at any rate without modification, a solution tried and tested abroad because of differences in court procedures, the powers of the various authorities, the working of the economy, or the general social context into which it would have to fit.[108] Despite the importance of comparative law in law reform, yet in any attempt of law reform, should not be preceded by an examination of foreign legal system seeking solutions. For instance, the Nigerian Law Reform Commission in discharge of its functions would only examine foreign solutions as where it appears to it likely to facilitate the performance of any such function.[109] The Act gave discretion to the Commission in the use of comparative method. This provision of examination of foreign legal system seeking solutions is copied from the U.K. Law Commissions Act of 1965 which makes significant formal recognition of the value of comparative legal research. Particularly, in section 3(1) of the U.K. Law Commissions Act of 1965 provides that:

[108] Ibid 17
[109] See section 5 (4)

It shall be the duty of each of the Commissions to take and keep under review all the law..., and for that purpose -- (f) to obtain such information as to the legal systems of other countries as appears to the Commissioners likely to facilitate the performance of any of their functions.

Darius Whelan[110] admitted that section 3(1)(f) of the U.K. Law Commissions Act of 1965 is drafted in such a way that the Commissioners are under a "duty" to obtain information as to foreign legal systems, but only if that information appears to them likely to facilitate the performance of any of their functions. While, the Nigerian Law Reform Commission Act does not mandate the Commission in discharge of its functions in the use of comparative method. The Commission would only examine foreign solutions as where it appears to it likely to facilitate the performance of any such function.[111] The Act gave discretion to the Commission in the use of comparative method. Some of the jurisdictions which established agencies resembling the UK Law Commissions after 1965 included a section similar to section 3(1)(f) in the statute of establishment. Many others decided that such a section was unnecessary, that the power and duty to conduct comparative research were implied in the other provisions of the statute. Jurisdictions which followed the U.K. example include Ireland, federal Canada, Manitoba, Tanzania, the Bahamas and Sri Lanka. The Irish Act states:

4(3) Where in the performance of its functions it considers it appropriate so to do, the Commission may... (b) examine and conduct such research in relation to the legal systems of countries other than the State as appears to the Commission likely to facilitate the performance of its functions.

The Irish Act is similar to that of the Nigerian Act as they are freer and give their respective Commissions discretion to the use of comparative method in the discharge of their functions.

[110] Ibid 158
[111] See section 5 (4)

2.4. **Nigerian Law Reform Commission Under the Military Rule.**

The idea of having an independent Law Reform conceived by the then military leaders. The desire of the then Nigerian military leaders, in 1979 to establish an independent law reform body, was focused on the need for uniformity of laws across the states and territories of the Federation and also to ensure that the law reflected current needs and value.[112] The Commission was established by Decree No.7 by the military Government under the leadership of then Head of the Federal Military Government, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Lt. General O. Obasanjo, in 23rd day of February, 1979. The Decree sets up a Law Reform Commission for Nigeria to undertake the progressive development and reform, in consonance with the norms prevailing in Nigerian society, of substantive and procedural laws applicable in the country by way of codification, elimination of anomalous or obsolete laws and general simplification of the law, and in accordance with general directions issued from time to the Commission by Government.[113]

Under the Decree, section 2(1) the members of the Commission are appointed by the Supreme Military Council and consist of –

(a) Four full-time Commissioners, one of whom shall be designated as the Chairman and at least one of whom is to be a non-legally qualified person; and
(b) Three part-time Commissioners, at least one of whom shall be a non-legally qualified person but a person with appropriate qualifications in the social science or in the humanities.

[112] Ibid 54
[113] Nigerian Law Reform Commission Decree 1979, Explanatory Note, Published by Authority of the Federal Military Government of Nigeria and Printed by the Ministry of Information, Printing Division, Lagos.

The persons appointed to be full-time Commissioners under paragraph(a) of subsection (1) above shall (except as already provided therein) be persons appearing to the Supreme Military Council to be suitably qualified— .

(a) by the holding of high judicial office;

(b) by experience as a legal practitioner of not ‘less than 12 years. standing; or

(c) by being an eminent scholar in law.

The Commission since its inception has been placed under the supervision of the Attorney-General of the Federation, the various reform proposals of the Commission is submitted to the Attorney-General of the Federation and the Attorney-General of the Federation bears the immense responsibility of ensuring that reform proposals by the Commission is implemented. It is on the note of implementation of the Commissions reform proposals by the Attorney-General of the Federation under the military rule it will be examined. The question of how the Commission faired during military rule will be examined by looking at the manner the Attorney-General of the Federation responded to the Commissions reform proposals during the military era. The Attorney-General of the Federation is the bridge, as it were, between the Commission and the legislative authority.[114] Section 5(6) of the Decree was to the effect that the Attorney-General shall lay before the Federal Executive Council any programmes prepared by the Commission and any proposals for reform formulated by the Commission pursuant to such programmes. This provision and other similar provisions in the Decree has been a barrier to the to prompt and steady implementation of the reform proposals by the then Military Government. Even though one may argue that he is statutorily compelled to table the Commissions Reports before the appropriate legislative authority,

[114] Ibid 4

yet the Decree did not specify any time-limit within which he must do so, or what happens he does not do so at all.[115] Anaekwe[116] admitted that it merely assumes that he will act on the Report in a timely manner. To her, this is a serious loophole in the Act.[117] During the Military Rule, the lack of time limit within which the Attorney-General of the Federation would submit the reform proposals of the Commission resulted in delay or non-implementation of the law reform proposals of the Commission.

For instance, between 1980-1984, the Reports of the Commission on the reforms of the Marriage Act; Prisons and Sentencing Policy; and the Uniform High Court Civil Procedure Rules, were submitted to the Attorney-General of the Federation, of which those reports were not tabled at all before the relevant legislative authority for implementation and no reason was given for such inaction.[118]

The examination on how the Commission faired during military rule will be looked in two phases: thus, period of 1979 to 1983 and period of 1985 to 1991. These phases will be considered based on the manner the Attorney-General of the Federation responded to the Commissions reform proposals during the military era.

[115] Even the current Act did not specify any time-limit within which he must do so, or what happens he does not do so at all.
[116] Ibid 4
[117] Then Decree under the Military era. It is same provision in the Decree.
[118] Ibid 4

2.4.1 **The Period 1979 to 1983**

Anaekwe[119] stated that these periods recorded the lowest ebb of the Commissions achievement in terms of having its reform proposals translated into legislation. The Attorney-General under section 5 (2) (a)[120] engineers a reform exercise by reference to the Commission of any proposals for the reform of the law. During the periods 1979 to 1983, there was no reference for reform given by the Attorney-General (except a reference on Adoption of the Federal Laws of Nigeria with the 1979 Constitution).[121] Notwithstanding, that the Commission may receive reference from the Attorney-General of any proposals for the reform of the law, it may also on its initiatives[122], carry out a reform exercise, hence the Commission initiated the reforms of some laws and submitted its final reports to the then Attorney-General of the Federation. These laws include Reports on Marriage, Prisons and Sentencing Laws or guidelines. Unfortunately, not one of the reform proposals saw the light of the day and no reason was given for such inaction. The only reasonable and inevitable conclusion to be drawn from such inaction appears to be lack of enthusiasm or interest on the part of the then Attorney-General.[123] Ezeobi[124] added that this lack of enthusiasm in implementation of law reform proposals is not peculiar to Nigeria.

2.4.1.1 **Some of the Reform Projects during this period of 1979 to 1983**

The Commission in spite its challenges during these periods, embarked on the reform of the Marriage Act and after consideration of the marriage laws in the country, the Commission submitted a draft bill to the then Hon. Attorney-General in October, 1980. Although, some objections were

[119] Ibid 7
[120] 1979 No.7
[121] Ibid 7
[122] Section 5(2)
[123] Ibid 7
[124] Ibid 58

raised, yet they were all resolved after the Commission revised and produced a new report. Despite the attempt by the Commission, yet the project was abandoned by the then military government.

In 1981, the Commission commenced the Reform of Prisons and Sentencing Policy. It was a comprehensive reform of the prisons system in Nigeria and a National Seminar on Prisons and Sentencing was then held in February 1982. After the Seminar, two Reports were prepared. One was the Report on the Reform of the Prison System and the other was the Report entitled "Towards a more consistent and Uniform Sentencing Programme in Nigerian Courts". These Reports were submitted to the Hon. Attorney-General in December, 1983. Unfortunately, no further action was taken on these Reports by the Hon. Attorney-General.[125]

On October 18th 1982, the Commission after studying the Civil Procedure Rules of the various High Courts in the country, and embarking on a reform exercise, held a symposium to consider the desirability or otherwise of having uniform Civil Procedure Rules for all High Courts and Magistrates Courts in Nigeria. A Report was then prepared in strict compliance with all the decisions and directives of the Symposium and the Conference. It consisted of a Bill, with the High Court Rules as a Schedule, and it incorporated all the alterations in form and in substance as agreed by the Symposium and the Conference.[126]

The Report was submitted to the Hon. Attorney-General on 14th February, 1984. It is again a matter of regret that no further action was taken on the Report.[127] The reason for this inactiveness by the Attorney-General during these periods is the lack of enthusiasm and the government usually feel driven to deal with matters that are of even greater importance to them than law reform.

[125] Ibid 29
[126] Ibid 31
[127] Although, the Report was revived in 1985 by the then Attorney-General, Prince Bola Ajibola S.A.N., K.B.E. due to his determination and he subsequently succeeded in persuading the States to adopt the Rules.

2.4.1.2 **The Period 1985 to 1991**

Shortly after the inauguration of the reconstituted Commission in 1985, the Commission had detailed discussion with the then Hon. Attorney-General of the Federation and Minister of Justice, Prince Bola Ajibola, on the work of the Commission and especially the urgent need to pursue a more vigorous law reform programme. Conversely, within the period 1985-1991, the Commission recorded the highest achievement both in terms of getting references from the Attorney-General and having its reform proposals translated into legislation.[128] Despite it being a military era, yet it the Commission experienced great success in its reform proposals. No wonder someone like Ezeobi[129] called it "the Golden Age of Law Reform Implementation". Some of the abandoned Reports of the Commission by the previous Attorney-General were revived. For instance, the Report on the Uniform High Court (Civil Procedures) Rules was revived and acted upon promptly and subsequently various States Military Governors and their Attorneys-General considered and promulgated their High Court (Uniform Civil Procedures Rules) Edict. The Decrees and Edicts promulgated on the English Pre-1990 Status of General Application by the Federal and States Government were based on the Reports of the Commission.

2.4.1.2.1 **Some other remarkable Reform Projects during this period**

In March, 1987, almost immediately after the Review of pre-1990 English Statutes applicable in Nigeria, the then Hon. Attorney-General and Minister of Justice directed the Commission to undertake a comprehensive review and reform of Nigerian Company Law "with a view a making the law more suitable and better able to cope with the needs and problems associated with the rapidly developing economic and social activities of the Nation".[130] The Commission's Report on

[128] Ibid 8
[129] Ibid 57
[130] Ibid 44

the Reform of Nigeria Company Law consisting of two volumes was submitted to the then Hon. Attorney-General of the Federation and Minister of Justice, Prince Bola Ajibola S.A.N, on 8th of April, 1988, which was promptly acted upon following its promulgation by the Federal Military Government.

In 1988, the then Hon. Attorney-General of the Federation and Minister of Justice referred the Commission to reform the intellectual Property Law, such as the Copyright and Industrial Property Rights. After the reform proposal with a draft Copyright Decree was submitted to the then Hon. Attorney-General in December 1988, it followed by the promulgation of the Copyright Decree 1988 (No. 47 of 1988). While for the Industrial Property Law which consists of law relating to Patents, Utility models, Industrial Designs, Trade Marks and the Registration of the transfer of foreign technology, the Commission submitted its Report to the then Attorney-General of the Federation.[131] The Commission was so preoccupied during this period that the Attorney-General had to resort to the use of ad-hoc committees for the reform of some laws which needed urgent attention. These were Committees on: Unification and Reform of the Criminal Laws and Procedures Codes; Corruption and Other Economics Crimes; Banks Frauds and Other Financial Practices; Compensation and Remedies for Victims of Crimes; Better Protection for Women and Children; and Town and Country Planning Laws; Law Revision; and Customary Law Committee, the Reports by the Committees on Bank Frauds and Other Financial Institutions Decree (now Act) 1991 and the Law Revision Act 1990 respectively. Despite the constitution of the ad-hoc for these reforms, yet the Commission was duly represented in these respective committees.

[131] Ibid 61, although it was not implemented by the then Attorney-General of the Federation before he left office.

Although, all the reform proposals of the Commission during the military period 1985 to 1991, yet it recorded much successes than the period of 1985 to 1991 which was more like a democratic civilian rule where reform process should have been at its crowning. The military period 1985 to 1991 illustrates that the success of the Commission is dependent on the enthusiasm of the Attorney-General of the Federation, despite it was a military era. The reasons the Commission recorded such a huge success during the military era is not just on the enthusiasm of the Attorney-General of the Federation, but also the fact that the Attorney-General is a member of the Supreme Military Council which is the Legislature during the military era. The presence of the Attorney-General in the Supreme Military Council during the military, helped in ensuring that the Commissions reports are well implemented and promulgated into law.

CHAPTER THREE

LEGISLATIVE PROCESS, ITS NATURE AND PROCEDURE

This Chapter critically examined the historical development of the Legislature focusing on its nature, its powers and the role to make legislation, various types of legislation and the procedures in making legislation.

3.1. The Legislature and Powers to Make Legislation

Law reform is like a vehicle and the main engine which takes it to its destination is the Legislature. The legislature according to the Black's Law Dictionary[132], is that branch of government responsible for making statutory laws.

3.1.1. The Nigerian Legislature: Historical Perspective

The development of the legislative institution in Nigeria according to Adebo (1988) can be traced to 1861 when the colonial government officially occupied Lagos. The colonial Governor as a means of governing the colony of Lagos, established a Legislative Council to oversee the affairs of the Colony. The constitution of the Legislative Council had only two members who were Nigerians. The Legislative Council did not perform any law-making function but served as an advisory body to the colonial governor. In 1900, the protectorates of Northern and Southern Nigeria were established by the British Government to replace the administration of the Royal Niger Company and the Niger Coast, protectorate over the North and South respectively. Six years later, the colony of Lagos was annexed to the Southern Protectorate. While in 1906, the Colonial Government, to avoid interference by the German and French in its dominance in its territory, amalgamated in 1914, the two protectorates, the Northern and Southern Nigeria. A new legislative body called the

[132] Ibid 919

Nigerian Council comprising thirty-six members who were randomly selected by the colonial government to represent, business and other interests. And out of the thirty-six members, six were Nigerians. The Council just like the Lagos Council that preceded it had no legislative power and performed no legislative functions. 1922 was a major shift which gave a major impact in the constitutional development of Nigeria and it also impacted in the development of the legislature. This was when the Clifford Constitution made provisions for the election of four Nigerians out of a total Council of forty-six members. The representation of Nigerians in the legislature kept increasing in the 1946 Richard's and the 1951 Macpherson Constitutions as each subsequent constitution tried to increase the number of elective Nigerians into the Colonial Legislative Council. During the first republic of Nigeria in 1960 after and adopted the Westminster Parliamentary system of government, Nigeria had a bicameral legislature. There were, for the Federation, the Senate and the House of Representative and, for the Regions, the House of Chiefs and the House of Assembly. The Senate and the House of Chiefs were the Upper Houses for the Federation and the Regions respectively. The House of Representatives was made up of 312 members elected nation –wide to serve for five years and a senate of 44 members selected from the various components of the Federal System (Adebo 1988). However, in the second republic, the federation retained her bicameral model which was renamed as the National Assembly but the states became unicameral systems. It is important to mention at this point that most countries like New Zealand, Denmark, Spain, Bulgaria, Israel and Greece practice unicameral legislature. In Nigeria for example, apart from the federal government, other tiers of the government such as the states and local governments practice unicameral legislature. This means that the local government is made of only one chamber of the legislature and whose members are directly elected by the electorates. The basic of popular representation in the National Assembly of the second republic was both numerical and geographical. For elections to the House of Representatives, the nation was divided into electoral

districts subject to the constraint that no one constituency's boundaries might lie within more than one state. Dividing the number of registered voters nation-wide (in 1979, 47.7 million) by the number of seats to be filled in the House (450), on average of every 100,000 or so voters represented by one deputy (Graf, 1988). Whereas, for elections to the senate, representation was by geographical unit. Each of the 19 states, regardless of population, was subdivided into five approximately equal territorial constituencies, each of which returned one senator. The reason for instituting this principle of geographical representation and establishing a second chamber related to the same complex of forces and interests that produced federalism and the federal character of Nigeria. The bicameral federal legislature in the second republic, composed of a House of Representatives of 450 members and a Senate of 96, was structured as the highest representative body of the liberal- democratic order and was the agency through which popular sovereignty was transmitted. As such it was supposed to articulate the will of the people, and its legislation was passed in the name of the people for the advancement of the national development.[133]

3.1.2. **The Role of the Legislature.**

The Constitution underscores this role through the vesting provisions in section 4 which gives powers to make legislation by the National Assembly and State Houses of Assembly. At the Local government level this function is performed by the Legislative arm of the Local government council.[134] For the purposes of this work more emphasis will be placed on the National Assembly and its role in legislature, as the foundation of this is in section 4 of the Constitution.

Section 4 of the Constitution states:

[133] Edet J. Tom and Amadu J. Attai, 'The Legislature and National Development: The Nigerian Experience' 2014, *Published by European Centre for Research Training and Development UK (www.eajournals.org)*, Global Journal of Arts Humanities and Social Sciences Vol.2, No.9, pp. 63-78.
[134] Ibid 41

4. (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States. (4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:-

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution. (5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void. (6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State. (7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:-

(a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

The constitution recognizes the principle of separation of power by making provisions for upholding this in the constitution. The National Assembly (Senate and House of Representatives) is empowered to legislate over matters in the Exclusive list to the exclusion of the Houses of Assembly of the state. It can also make laws in respect of matters contained in the Concurrent legislative list to the extent that is also provided in the same schedule to the constitution. The States Houses of Assembly are empowered to make laws in respect of matters contained in the concurrent legislative list as it is provided for in the schedule to the constitution. Again, the legislative houses at the federal and state levels are empowered to make laws on any other matter in respect of which the constitution has conferred powers on them to make laws.[135]

The legislature in exercising such powers under the Constitution is charged to conform to the provisions of the Chapter II of the Constitution, which are the Fundamental Objectives and Directive Principles of State Policy. The reason for this is to ensure that the welfare, economic and social development of the Nigerian citizens are accommodated in the laws. As seen in previously, whereas the provisions of Chapter II are not justiciable by themselves, however laws passed by the

[135] Ibid 69-70

National Assembly in furtherance of them may create and confer enforceable and justiciable rights on citizens.[136]

Although, the Legislature has numerous roles of which the primary role is law making, the other roles include: (a) Representative role and (b) Oversight role. The representative role of the legislature is derived from the fact that the legislature is composed of elected representatives of the people who are representing different constituencies. For effective representation, the country is divided into three hundred and sixty (360) constituencies. This representation is both in the Senate and House of Representatives and constitutionally both the members of Senate and House of Representatives representing their constituency are required to present and defend the interest and concerns of their constituencies during policy-making in their various Assemblies. On the other hand, the oversight role of the Legislature is based on the supervisory responsibility that the legislature carries out on the executive and government ministries, departments and agencies (MDAs). The essence of this role is to ensure that the other arms of government comply with legislative enactments, which includes: the judiciously expending their budgets in order to effectively meet their policy mandates and confirmation of nominations made by the Executive.

The above role can be well described in a diagram:

Fig. 1

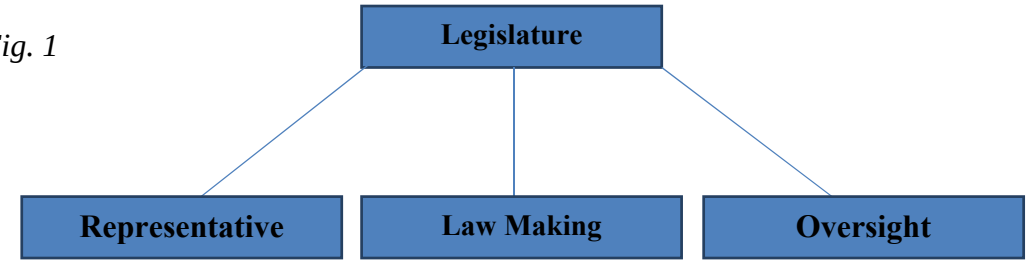

Fig. 1 above is a diagram which shows the summary of the legislature and its primary role or we can call it the 'Trinity in Legislature'. Also, importantly to mention that the law-making role of the legislature includes the power to alter the Constitution or any law; and to ratify treaties.

[136] Ibid 43

3.2. **Types of Legislation: Acts, Laws, Bye-laws, Subsidiary Legislation**

Legislation is expressed in different forms depending on the authority of the legislature. The word legislation is wide as it seems to cover both primary legislation and secondary legislation. Black's Law Dictionary[137] defined legislation as the process of making or enacting a positive law in a written form, according to some type of formal procedure, by a branch of government. This definition is apt as it contains three important elements: firstly, the fact that a legislation should be in a written form; secondly, that its making follows a formal procedure and thirdly that such procedure is usually executed by a branch of government. As explained earlier, the branch of government that is responsible for the making of a legislation is the legislature, and the nature of legislation will be determined by the legislature. Nigeria is a Federation and under the Constitution[138], the legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives, whereas, the legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.[139] Some of the various nature which a legislation may take includes: Acts, Laws, and Subsidiary legislation.

3.2.1. **Act**

An Act is bill which has passed through the various legislative steps required for it and which has become law.[140] The Black's Law Dictionary[141] defined it as the formal product of a legislature or other deliberative body. Statute is a word which is usually interchangeably used with the word Act

[137] Ibid 918
[138] Section 4 (1)
[139] Section 4 (6)
[140] https://nigerianscholars.com/tutorials/arms-of-government/legislation/ accessed on 17th February, 2022.
[141] Ibid 27

as a statute is defined as a law passed by a legislative body[142]. D.T Adem[143] defined Act as a Bill that has been approved by both Houses of Legislature in identical form and signed by the President or passed over-riding the President's veto. This definition is adopted as it identifies a system which is peculiar to the Nigerian system. An Act in Nigeria is legislation by the legislature, introduced in the House (either Senate or House of Representative) in form of Bill and after some procedure it is passed into law and proceeds to the President (Executive) for an assent, then it becomes a law. Thus, before an Act is passed into law, it must under some processes as a Bill. A Bill[144] is a proposed law that has been introduced in the Legislature for consideration. An Act does not become a law until it is first conceived as a bill and as such pass through some legislative process. A bill for an Act is usually sent to the National Assembly either to the Senate or House of Representative. Such Bill may either be a Members Bills, which are bills sponsored by legislators or an Executive Bills, which are bills emanating from the executive. The Senate is headed by the Senate President whereas, the House of Representative is headed by the Speaker. Where a Bill is received by the Senate President, a copy of that Bill is sent to the Rules and Procedure Committee by the Senate President who is the Presiding Officer of the Senate for scheduling on the Order Papers, for the introduction of the Bill into the House. Whereas, where a Bill is received by Speaker of the House of Representatives, a copy of that Bill is sent to the Rules and Business Committee by the Speaker who is Presiding Officer of the House of Representatives for scheduling on the Order Papers, for the introduction of the Bill into the House. The various Committees mentioned earlier goes ahead to scrutinize the Bill in order to ascertain whether the Bill is necessary, relevant, practicable and does not offend any provisions of the Constitution or any other laws. The bill is then published, in the Senate, all Public Bills are expected to be published in the *Official Gazette or Journal of the*

[142] Ibid 1448
[143] Adem D.T. 'Legislative Drafting Manual', *Interpak Books Pietermaritzburg (2014), p.xiii*
[144] Ibid xiv

National Assembly. However, all Private Bills must be published in two successive issues of the Official *Gazette* or the *Journal* by the Clerk of the National Assembly. Whereas, in the case of the House of Representatives, all Public Bills must be published at least once in the Official *Gazette* or the *Journal.* The Private Bill must also be published in the Official *Gazette* or the *Journal*. There must however be a covering letter of the intention to introduce the Bill by the Member sponsoring the Bill.[145] The Bill is then allowed to go through some legislative stages before it is then passed into law.

(a) First Reading

This is the first stage where the Bill is introduced and the Clerk of the House reads the short title and gives a brief statement and background on the Bill. There is no debate on the Bill. The Rules and Procedure Committee (for the Senate) or the Rules and Business Committee (in case of the House of Representative) then set a date for its Second Reading.

(b) Second Reading

At this stage the general merits and principles of the bill is then considered and deliberated upon. It is the sponsor of the Bill that reads the bill the second time, and is seconded by another Member. When the bill is read the second time, it is deemed to have approved the House bill. If, on the other hand, the bill is terminated where the bill is not allowed on the floor of the chambers to be read at the second time. However, when the Bill is read a second time, it is referred to a Standing Committee unless a decision is made to commit it to the Committee of the Whole House for consideration.

[145] Ibid 238-239.

(c) Committee Stage

Following the second reading, bills are submitted to the relevant committees for critical examination and the Committee may hold public hearings where necessary. The committee cannot terminate a bill, but rather, may approve the bill unaltered, or propose or make recommendations for an amendment to it.

(d) Report Stage

Immediately after the bill is considered at the Committee Stage, the Committee then presents its report to the House. Where the report of the Committee is adopted, the Bill progresses into the next stage called 'Third Reading' and the Bill is read the third time.

(e) Third Reading

At this stage, the bill is considered; examining the various amendments and the House considers whether the bill is passed into law. The practice is that the member in charge of the bill reports to the House that the Committee of the Whole has considered the bill and passed it with or without amendment and moves a motion that "the bill be now read the third time."

A "clean copy" is usually signed by the Clerk and endorsed by the Presiding Officer of the House where the Bill originates. It is the forwarded by the Clerk of that House to the other House with a message desiring the concurrence of the other House. When amendments proposed by one House are accepted by the other House, the Clerk of the House to which the Bill has been sent will retain the Bill and send a message to the originating House, "that the House has agreed to the Bill without amendment". But when a Bill passed by one House, is not agreed to by the other House or is agreed to with some amendments, a conference of both Houses would be requested by the originating

House. [146] The essence referring the bill at this point to the Conference is so that there will be harmonization by the two Houses and where this is done, the Conference makes its report which is adopted, deliberated and accepted. Once accepted, the Clerk to the National Assembly by virtue of section 2(1) of the Acts Authentication Act[147] prepares a clean copy of the Bill as passed by both Houses of the National Assembly showing all the amendments, and he endorses and signs a certificate that the copy has been prepared as prescribed and is a true copy of that Bill. Further, the Clerk sends the Bill and the Schedule in triplicate to the President for assent.

(f) Assent Stage

Immediately the Clerk sends the Bill and the Schedule in triplicate to the President for assent, the President signs the Bill where he is satisfied with the provisions of the Bill. It is only when the President signs the Bill that it becomes an Act.[148] By virtue section 58 (4)[149] where a bill is presented to the President for assent, he shall within thirty days to signify that he assents or that he withholds assent.

Where the President after thirty days withholds assent, the bill is again passed by each House by two-thirds majority, the bill become an Act and it is regarded that the President's Veto is overridden by the National Assembly.[150]

3.2.2. **Laws**

There are so many definitions of law, as it is may be defined as the regime that orders human activities and relations through systematic application of the force of politically organised society,

[146] Adem D.T, Ibid 242
[147] Cap. A2 Laws of the Federation, 2004.
[148] Section 58 (1) of the Constitution of the Federal Republic of Nigeria, 1999
[149] Constitution of the Federal Republic of Nigeria, 1999.
[150] Section 58 (5)

or through social pressure, backed by force, in such a society; the legal system <respect and obey the law>. Also, it means set of rules or principles dealing with a specific area of a legal system <copyright law>.[151] Again, it has been defined as that which is laid down, ordained, or established. A rule or method according to which phenomena or actions co-exist or follow each other. That which must be obeyed and followed by citizens, subject to sanctions or legal consequences, is a "law." Koenig v. Flynn, 258 N.Y. 292, 179 N. E. 705[152]. The various definitions show that a law has a binding force and commands obedience by the people which it is made for. However, for the purposes of this work, the definition which may be adopted is that which in line with the definition of an Act, as a bill which has passed through the various legislative steps required for it and which has become law. The reason for this definition is that a Bill which is passed by the Federal legislature as called Act, whereas, that passed by the legislature in states in Nigeria are called law. The legislative powers of a State of the Federation are vested in the House of Assembly of the State.[153] Similar to what happens in the case of an Act, before a 'Law' is passed by the legislature (House of Assembly), it must undergo some processes as a Bill. The processes of a law as a Bill are the same, except in some cases. The Bill for a law is allowed to go through some legislative stages before it is then passed into law.

3.2.2.1. **Law-making process in a State House of Assembly**

(a) First Reading

As stated earlier in the case a Bill for an Act, most bills for a law are generated by the executive arms of government and are tagged as "Executive Bills". Whereas, Bills generated from any of the members are referred to as ''Members Bills''. The first stage is that Bills are introduced to the

[151] Ibid 900
[152] Henry Campbell Black, M. A, 'Black's Law Dictionary', (1968) Revised Fourth Edition by the Publisher's Editorial Staff, St. Paul, Minn. West Publishing Co., p.1028
[153] Section 4 (6) of the Constitution

House of Assembly by the governor if it is an executive bill, it would thereafter be placed on the official gazette of the House before and slated for the First Reading. Copies of the Bills are circulated among members of the House in preparation for the second reading. There is no debate on the Bill.

(b) Second Reading

At this stage, members will debate on the general principle of the bill and thereafter resolve whether the bill is worthy of consideration or not. When the bill is read the second time, it is deemed to have approved the House bill. If, on the other hand, the bill is terminated where the bill is not allowed on the floor of the chambers to be read at the second time. However, when the Bill is read a second time, it is referred to the appropriate house committee or joint committee as the speaker might deem necessary.

(c) Committee Stage

At the committee stage, public hearing is conducted for public participation and interest in the proposed law. Thereafter the committee will collate all the submission of the general public and report to the Honourable House for consideration at the committees of the whole house. The committee cannot terminate a bill, but rather, may approve the bill unaltered, or propose or make recommendations for an amendment to it.

(d) Report Stage

Immediately after the bill is considered at the Committee Stage, the Committee then presents its report to the House. The report on the Bill is considered on its merits and its demerits, clause by clause at the final consideration, the Bill will be slated for the Third Reading where the report of the Committee is adopted, and the Bill is read the third time.

(e) Third Reading

This is the final stage a bill for a law passes through before it is passed into law. There is no Conference stage under the state legislative bill process, this is because the state practice a unicameral legislative system. Once the bill for a law scale through the third reading, then it is forwarded by the Clerk of the House to the Governor for assent. In the case of appropriation Bill, the Governor shall cause to be prepared and laid before the house of Assembly at any time before the commencement of each financial year estimates of the revenues and expenditure of the state for the next following financial year. It's thereafter considered to have been read the First Time.

(f) Assent

Where the Clerk sends the Bill and the Schedule in triplicate to the Governor for assent, the Governor signs the Bill where he is satisfied with the provisions of the Bill. It is only when the Governor signs the Bill that it becomes a law[154]. By virtue of section 100 (4)[155]where a bill is presented to the Governor for assent, he shall within thirty days to signify that he assents or that he withholds assent. Where the Governor after thirty days withholds assent, the bill is again passed by two-thirds majority of the House, the bill become an Act and it is regarded that the Governor's Veto is overridden by the House of Assembly.[156]

3.2.3. **Subsidiary legislation**

This is usually regarded as subsidiary instruments or subordinate legislation and it includes rules, regulations, orders, notification, bye-law and proclamations. Subsidiary legislation is a legislation

[154] Section 100 (1)(2) Constitution
[155] Constitution of the Federal Republic of Nigeria, 1999.
[156] Section 100 (5) Constitution

which is subordinate or under the control of another law or Act. In definition of Subsidiary Legislation, Section 37 (1) of the Interpretation Act states that "subsidiary instrument" means any order, rules, regulations, rules of court or byelaws. Subsidiary legislation is usually delegated by the legislature. Under the Constitution[157], the Legislature is empowered to make legislations, however, the legislature cannot legislate on all aspects of human endeavours hence the legislature delegates powers to make legislation on some specific areas or matters to some other bodies. Such delegated powers are usually delegated to bodies such as the President, Ministers, Ministries, Departments and Agencies, statutory authorities, local government councils, etc. Godwin Iheabunike[158] stated that in the usual case, the delegation is to authorize subsidiary legislation to supplement provisions on a specific matter that are already set out in primary legislation. But more general powers may be granted to bodies performing a governmental role over a limited area or activity.

3.2.3.1. **Types of Subsidiary Legislation**

Section 37 (1) of the Interpretation Act mentioned the various types of subsidiary instrument which includes: order, rules, regulations, rules of court or **byelaws.**

(a) An Order means an instrument that applies provisions contained in the enabling Act to specific persons, or classes of persons, or to specific cases or places.
(b) Rules can be an instrument that prescribes procedural requirements or formalities. Example includes rules of court that prescribes procedural requirements relating to court proceedings.

[157] Section 4
[158] The Making of Subsidiary Legislation: [Rules, Regulations, Orders, Etc.], synopsis of the presentation at the joint legislative/legal drafting training on "new innovation in legislative drafting skills" organized by the open government partnership with the support of trust Africa, At Bolton white hotel, Abuja on 7th march, 2018, <https://www.academia.edu/37764731/THE_MAKING_OF_SUBSIDIARY_LEGISLATION> accessed on 20th February, 2022.

(c) Bye-law or bylaws are made by statutory bodies, Academic institutions, etc to have local or specific application and having effect only within the area of responsibility of the authority. For instance, the Local Government in Nigeria makes Bye-laws.

(d) Proclamation: the formal public announcement of legislation that is likely to be important or have significant consequences. Examples include declaration of a state of emergency, annexation of a territory, etc.

(e) Regulations: subsidiary legislation of general application, especially that containing provisions in the likeness of a substantive law.

(f) Notice: a formal announcement of subsidiary legislation unlikely to have major significance for the general public.[159]

Where a person is exercising a delegated power, such power must be reasonable and in line with the authority that delegated such powers to it. The interpretation Act authorises a delegate to exercise powers that are reasonably necessarily incidental to the exercise of legislative powers explicitly conferred.[160] The power to make subsidiary legislation should be consistent with the enabling statutes. In *Powell v. May*[161] , the Court observed that a Bye-law cannot permit what the statute expressly forbids and vis-visa; although it can forbid what will otherwise be lawful at common law. Also, the validity of the subsidiary legislation may be challenged not just on the ground that it is inconsistent with the enabling statue but also any other statute.

The Interpretation Act also provided that if there is any subsidiary instrument in force which is enacted under the repealed enactment, such instrument shall continue to remain in force as though it is made by the substituted enactment unless it is inconsistent with the substituted enactment.[162]

[159] Ibid
[160] Section 10 (2) Interpretation Act
[161] (1946) KB Pg. 330
[162] Section 4(2)(c), ibid

Where an enactment describes another enactment in terms of a word occurring in the other enactment, the Act provides that that word in that other enactment is included in the portion described.[163] And where an enactment describes a consecutive series of provisions of another enactment by reference to the first or last of the series, that provision is included in the series described by the describing enactment.[164]

3.3. **Legislative Processes: Nature and Types of Legislative Bills.**

The Legislative process is a deliberate action which must be performed by the legislature in order to have legislation. Before legislation is passed into law by the legislature, it goes through some processes as a Bill process. A bill is a proposed law that has been introduced in the Legislature for consideration. Legislative process is more organized, not spontaneous as requires a long period of deliberation and consideration of many interests and implications. Although legislative process is complex, it is not complicated in its nature.

The power of the Legislature to make laws, at the Federal level is by the National Assembly and this power shall be exercised by bills passed by both the Senate and the House of Representatives and, assented to by the President.[165] Whereas, at the State, the power of the Legislature to make laws is by the House of Assembly and this power shall be exercised by bills passed by the House of Assembly and, assented to by the Governor.[166] Commenting on this section, Professor Jadesola Akande (of the blessed memory) maintained that legislative power is specifically granted to the two Houses which they exercised by passing Bills, however, in legislative matters, the National Assembly is expected to be dominant branch of the government, it is not put in a position to arrogate

[163] Section 5(1), ibid
[164] Section 5(2), ibid
[165] Section 58 (1), ibid
[166] Section 100 (1), ibid

itself all powers. So, the President is given a qualified veto tool to prevent the National Assembly from overstepping its boundaries and to enable him to influence the actual course of legislation.[167] There are rules that guides the bill processes and they are the Standing Orders for both the Senate and House of Representatives. For the Senate we have the Senate Standing Order 2015 as amended particularly Chapter XI and Standing Orders of the House of Representatives, 9th edition particularly Order XII.

3.3.1 **Types of Legislative Bill**

They are generally of two types of bills: (a) Private and (b) Public Bills. Private Bills affect private citizens, corporate entities or a particular class of people. A public bill on the other hand, applies to the public at large. These bills are broadly categorised into three classes:

(a) An Executive Bill: this is the kind of bill initiated by or from the President of the Federal of Nigeria or any arm, department or agency of the Federal Government of Nigeria and introduced into the Senate as a Legislative Proposal of the Executive.[168] Executive Bill that emanates from the President shall be accompanied by a covering letter personally signed by the President and sent to the President of the Senate and the Speaker of the House of Representatives.[169]

(b) A Member's Bill: this class of bill is initiated by a member or group of members of either House or both Houses of the National Assembly and introduced into the Senate as a legislative proposal of the member or group of members sponsoring a Bill.[170] Such bills

[167] Peter Ademu Anyebe, 'Rules and Procedures Governing Legislative Process in Nigeria', *Journal of Law, Policy and Globalization www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.48, 2016,* <https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/30148/30964> accessed 10th February, 2022.
[168] Order 76(a) of the Senate Standing Order 2015 as amended
[169] Order 78(1) (a), ibid, Order XII Rule 2 (1)(a) Standing Order of the House of Representatives, 9th edition.
[170] Order 76(b), ibid

emanating from the Senate is forwarded to the President of the Senate, while bills emanating from House of Representatives is forwarded to the Speaker.

(c) A Private Bill, is any bill other than an Executive Bill or Member's Bill.

For a private member Bill, the sponsor shall forward the draft to the Speaker of the House of Representatives who then forwards it to the Rules and Business Committee. The Speaker shall cause the Bill to be numbered and published in the Schedule of Bills.[171] In the Senate, the sponsor of the Bill shall forward it to the President of the Senate who also forwards it to the Committee on Rules and Business for publication in the schedule of Bills in the Order Paper.[172] A Bill generally passes through various stages, which include three readings before it is passed into law. This will be discussed below.

3.4 **Procedure in Making of Legislation.**

(a) Presentation Stage

The first step in passing a bill into law is usually by giving a notice of presentation. Executive Bill that emanates from the President shall be accompanied by a covering letter personally signed by the President and sent to the President of the Senate and the Speaker of the House of Representatives.[173] All bills that emanates from the Judiciary is forwarded to the President of the Senate under a covering letter personally signed by the Chief Justice of the Federation.[174] The President of the Senate shall forward such Bill(s) to the Committees on Rules and Business for publication in the Schedule of Bills in the Order Paper and registered in the Register of Bills.[175]

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[171] Order XII Rule 2 (3) of the House, ibid
[172] Rule 78 of the Senate, ibid
[173] Order 78(1) (a), ibid, Order XII Rule 2 (1)(a) Standing Order of the House of Representatives, 9th edition.
[174] Order 78 (1) (b), ibid
[175] Order 78 (3), Order XII Rule 2(5) ibid

For a public or government bill; the Clerk, on receiving the draft from the Senate President or Speaker, must first publish it in the Official Gazette, and a copy must be sent to every member of the chamber in question.[176] For a Private Member's Bill, the member sponsoring the bill must move, by motion, for leave to present the bill by sending a copy to the Clerk of the House. The member must also cause the bill to be published in at least two successive issues of the Official Gazette. A copy of the first issue must be sent to each member after its publication.

(b) First Reading

This is the first stage where the Bill is introduced and the Clerk of the House reads the short title and gives a brief statement and background on the Bill. Upon the short title of the Bill being read aloud by the Clerk (Senate or House of Representative), the Bill shall be deemed to have been read the first time.[177] There is no debate on the Bill. The Rules and Procedure Committee (for the Senate) or the Rules and Business Committee (in case of the House of Representative) then set a date for its Second Reading. Importantly, at the conclusion of the first reading, or on any subsequent stage of a Bill, a day to be named by the Committee on Rules and Business is appointed for next stage.[178] The reason for this is to monitor the stages at which the bill progresses in the House.

(c) Second Reading

On this stage, on the order for the second reading of a bill being read, a motion may be made "That the Bill be now read a second time", and the general merits and principles of the bill is then considered and deliberated upon.[179] It is the sponsor of the Bill that reads the bill the second time, and is seconded by another Member. When the bill is read the second time, it is deemed to have

[176] Order 78 (4), Order XII Rule 1(1), ibid
[177] Order 78 (6), Order XII Rule 2(6) ibid
[178] Order 79 (2), Order XII Rule 3(2) ibid
[179] Order 80 (1), Order XII Rule 4(1) ibid

approved the House bill. On the other hand, the bill is terminated where the bill is not allowed on the floor of the chambers to be read at the second time. However, when the Bill is read a second time, it is referred to a Standing Committee unless a decision is made to commit it to the Committee of the Whole House for consideration.[180] Usually, where the Bill is touching on the jurisdiction of two or more committees, the bill is referred to the committee having dominant Jurisdiction and the other committees becomes a sub-committee for the purpose of considering and reporting to the main committee on aspects of the bill affecting their committees.[181]

(d) Committee Stage

Following the second reading, bills are submitted to the relevant committees for critical examination and the Committee may hold public hearings where necessary. The committee cannot terminate a bill, but rather, may approve the bill unaltered, or propose or make recommendations for an amendment to it, if any. However, such amendments shall be in line with the principles and subject matter of the Bill as agreed in the second reading. In expanding this stage, Adem D.T outlined that, the Chairman of the Standing or Special Committee, after the conclusion of the Committee's work, takes a date from the Rules and Procedure Committees or Rules and Business Committee for the formal presentation of the Committee's Report to the House.

(e) Report Stage

Immediately after the bill is considered at the Committee Stage, the Committee then presents its report to the House after consideration of the bill with amendments (if any) it proposes to it.[182]

[180] Order 81 (1), Order XII Rule 5(1) ibid
[181] Order 81 (2), Order XII Rule 5(2) ibid
[182] Order 81 (3), Order XII Rule 5(3), ibid

Where the report of the Committee is adopted, the Bill progresses into the next stage called 'Third Reading' and the Bill is read the third time.

(f) Third Reading

When a Bill has been ordered for third reading, any Senator who wished to amend or delete any provisions contained in the Bill or to introduce any fresh provision may give notice of his intention on the order for third reading being read to move "That the Bill be recommitted". If such motion be agreed to, the senate shall resolve itself into Committee immediately or upon such day as the Rules and Business Committee may appoint. When the Bill has been reported, the Senate shall then proceed with the third reading of the Bill unless the Rules and Business Committee decides to postpone this stage to a later day. When a Bill has been the subject of a special report from a Standing Committee, the Chairman in charge of the Bill may, on notice given, move "That the Bill be re-committed to the Standing Committee". On this question being proposed, the Senate may debate the special report from Standing Committee.[183] A "clean copy" is usually signed by the Clerk and endorsed the Presiding Officer of the House where the Bill originates. It is then forwarded by the Clerk of that House to the other House with a message desiring the concurrence of the other House.[184] When amendments proposed by one House are accepted by the other House, the Clerk of the House to which the Bill has been sent will retain the Bill and send a message to the originating House, "that the House has agreed to the Bill without amendment". However, where a Bill passed by one House, and its provisions are not agreed by the other House or is agreed to with some amendments, a conference of both Houses would be requested by originating House.[185]

[183] Order 86 (2), Order XII Rule 10(1), ibid
[184] Order 86 (5), Order XII Rule 10 (5), ibid
[185] Order 87 (a), Order XII Rule 11 (a), ibid

(g) Conference

Where either of the Houses amendments are not accepted by the other House, then Conference Committee of both Houses meets to address the differences. The objective of the Conference Committee of both Houses is to deliberate only on areas of disagreement between both Houses. It is not in the place of the Conference Committee to insert in its report matters not committed to it by the Houses, also the Conference Committee is not empowered to remove any already agreed provision in the Bill by both Houses. Where the Conference Committee is done, they prepare a Report making some recommendations. Such Report is deliberated on and where the Conference Report is adopted by both Houses, each House incorporates the various amendments by the Houses and re-passes the Bill. Where both Houses pass the Bill, the Bill is sent to the Clerk that passed the Bill for onward transmission to the Clerk of the National Assembly. Once this is done, the Clerk of the National Assembly transmits the Bill to the President for Assent.

(h) Transmission of Bill for Assent

Where the Bill has been passed by both Houses without amendment, or with such amendments as may have been agreed by both Houses, the Clerk of the National Assembly certifies a clean copy of the Bill and as soon as possible present it to the President for assent.[186] The Clerk of the National Assembly after certification of the Bill and its Schedule, it is then sent by him in a triplicate form to the President for assent.

(i) Assent

[186] Order 88 (a), Order XII Rule 12(a), ibid and section 2(1) Acts Authentication Act, Cap. A2 Laws of the Federation, 2004

Immediately the Clerk sends the Bill and the Schedule in triplicate to the President for assent, the President signs the Bill where he is satisfied with the provisions of the Bill. It is only when the President signs the Bill that it becomes an Act.[187] By virtue section 58 (4)[188] where a bill is presented to the President for assent, he shall within thirty days to signify that he assents or that he withholds assent.

Where the President after thirty days withholds assent, the bill is again passed by each House by two-thirds majority,[189] the bill become an Act and it is regarded that the President's Veto is overridden by the National Assembly.[190]

Although, the above are the legislative processes for bill general bill passage, it is important to note there are other types of bills and there are unique procedures for passing such specific types of bills. Those other types of bills are: the Appropriations Bill or National Budget and any other bill seeking to amend the Constitution.

[187] Section 58 (1) of the Constitution of the Federal Republic of Nigeria, 1999
[188] Constitution of the Federal Republic of Nigeria, 1999.
[189] Order 88 (b), ibid
[190] Section 58 (5), ibid

CHAPTER FOUR:

THE IMPACT OF LAW REFORM COMMISSION IN THE LEGISLATIVE PROCESS

This Chapter examined the impact of law reform commission in legislative process by looking at provisions Nigerian Law Reform Commission Act 1979 in a bid to make a case for its review. The interrelationships between the work of Nigerian Law Reform Commission and the National Assembly were considered as well as those laws that resulted from the work of the Nigerian Law Reform Commission. The advantages of the establishment of the Commission and those major challenges militating against role of the Commission in the legislative Process were also considered.

4.1 **The interrelationships between the work of Nigerian Law Reform Commission and the National Assembly**

Law reform is an indispensable element in the Legislative process. Law is an instrument of economic and social change and this change is achieved by active law reform which eventually goes through legislative process. Okonkwo[191] quoting Osunbor stated that this process involves some thought as to how a proposed legislation will serve the purpose for which it is intended, how it will impact on the economy, on the citizens, whether it is for their benefit, is in consonance with their culture, their expectations and aspirations, how it will co-exist with other legislation, will the new law require repeal, modification of any existing laws, does it accord with global trends, will it derogate from existing treaty obligation? Etc. Despite the legislature in systems of government, yet the importance of Law Reform Commission is one that is recognised globally.

There are over sixty law reform bodies all over the world belonging to the International Law Reform Bodies[192] and over two-thirds of commonwealth countries have Law Reform Agencies belonging to the Commonwealth Association of Law Reform Agencies, established by law. The need for the

[191] Okonkwo. C. O, 'The Imperatives of Law Reform in the Law Making Process' (2012), ibid
[192] <https://www.lawreform.ie/useful-links/interntional-law-reform-bodies.132.html> accessed on 12th January, 2022.

law to be fair, modern, simple and just gave rise to the establishments of various law reform bodies and they are the American Law Institute in 1923, The California Law Revision Commission in 1953, Law Commission of India in 1955, Law Commission for England and Wales in 1965, Alberta Law Reform Institute in 1967, Queensland Law Reform Commission in 1968, the Australian Law Reform Commission in 1973, Tasmanian Law Reform Commission in 1974, the Nigerian Law Reform Commission in 1979, etc. Various terms have been used to refer to law reform bodies, among them Law Reform Agency, Law Reform Committee, Law Commission and Law Reform Institute. Whichever name it may bear according to the various jurisdiction, their primary purpose is to keep under review the laws of those jurisdiction with a view to their systematic and progressive development and reform in consonance with their societal norm, and in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with changes in the machinery of the administration of justice and generally the simplification and modernization of the laws of those jurisdiction.[193]

The various law commissions, for instance the Nigerian Law Reform Commission, perform the following functions: law reform, review, revision, codification, removal of obsolete provisions in the laws, mordernisation of laws, keeping the laws simple and modern. These functions are similar with that of the legislature; although the legislature's primary responsibility in most democracies is the promulgation of legislation. The various functions carried by the Nigerian Law Reform Commission involve legislative process. Importantly, legislative process does not usually begin in the floor of the legislature as in some instances it starts as legislative reform policy by the Executive

[193] See section 3(1) Law Commission Act 1965 (England and Wales) and section 5(1) of Nigerian Law Reform Commission Act 1979

Government, usually initiated by the Nigerian Law Reform Commission through its law reform exercise, and then finally passed through legislative processes by the Legislature.

The Legislature and the Commissions shares relationship in the area of legislative process through bill scrutiny. Till date, the Legislature in performing its function consults the Commission and seeks input of the Commission on the provisions of the Bill before them. The National Assembly increased reliance on the Commissions input on Draft Bills and participation in public hearings during the Committees Stage, on some Draft Bills from the year 2008 till date especially with reference to Bills and legal opinions of the Commission which are utilized by the National Assembly to enrich the quality of the Draft Bill. There are four law research departments in the Commission headed by Directors and supervised by the Chairman with Commissioners namely: (a) Business Law Department (b) Legal Drafting and property Law Department (c) Private Law Department and (d) Public Law Department. When bills are sent to the Commission, in most cases, from the Legislature (National Assembly), these research departments of the Commission seats on the bill from hour of 11am to at least 4pm, looking at the general merits and principles of the bill. The Commission has no power to terminate the bill, but rather, may in its findings, make proposal or recommendations for an amendment to it, if any. However, such amendments shall be in line with the principles and subject matter of the Bill as agreed in by the Legislature during the Committee Stage of Bill process. Further, the Commission, usually through its chairperson, may make a formal presentation to the appropriate Committees of the Houses on the Commission's findings on the bill.

4.1.1. **Bills received by the Commission from the National Assembly**

The Commission has been receiving Bills from the National Assembly. Some of those Bills received by the Commission from the National Assembly between 2010 to 2020 are well captured

by various works like Onwuasigwe Adaora[194] and Annual Reports of the Commission from 2010 to 2020.

The Commission still plays a vital role in the continuous transformation of the laws of the Federation by its active contribution to legislative process at some public hearings on Acts and Bills from the National Assembly and other Government Institutions. The Chairman represents the Commission at the National Assembly by personally appearing and contributing with written submissions and speaking to the submission on the Bills, as a major stakeholder in law reform and legislative process.[195]

4.1.2. **Stages of Law Reform by the Commission**

For the purposes of carrying out a reform project, the Commission may receive and consider any proposals for the reform of the law which may be made or referred to it by the Attorney-General of the Federation or may prepare on its own initiative and submit to the Attorney-General, from time to time, programmes for the examination of different branches of the law with a view to reform or may provide advice and information to Federal Government departments and other authorities or bodies concerned, at the instance of the Federal Government, with proposals for the reform or amendment of any branch of the law.[196] The stages of law reform include:

(a) Identification Stage

This is the preliminary stage and it may also be called the review or reform stage. Here, the Commission identifies areas where reforms are urgently required. It could be by reviewing an

[194] Onwuasigwe Adaora, 'functions of the Nigerian Law Reform Commission and Some of its Major Achievements', (2020), unpublished, pp.26-28
[195] Nigerian Law Reform Commission Annual Report for the year 2019, <http://nlrc.gov.ng/documents/ANNUAL%20REPORT%202019%20%20CORRECTION.pdf> accessed on 12th January, 2022.
[196] Section 5(2)(a)(b)(e)

existing legislation and identifying its defects or an entire novel area that requires legislation for more efficient and effective justice system. This is done by identifying those anomalies in the system and making proposals for reform.

(b) Research Stage

After the Commission has identified areas which need reform, it then carries out a more detailed study on the subject matter, by first looking at the provisions of the Constitution and other laws to ascertain the adequacy in the subject matter. In carrying an in-depth study, the Commission consults wide range of stakeholders on the subject matter. For this purpose, questionnaires may be issued and answers are collected, analysed and collated. The Commission may also compare similar jurisdictions to identify areas of the similarities and differences between the legal systems of those other jurisdictions as regards the subject matter.[197]

The various information gathered above helps the Commission in preparing a Working Paper. The Working Paper is a comprehensive draft which usually contains the Objectives of the Reform, the Provisions of the Law (where the reform is on an existing law), Defects or lacuna (which forms the basis for reform), Summary Recommendation of the Commission and a Draft Bill.

(c) Pre-Workshop Stage

At this stage the Commission seats in a research meeting to deliberate extensively on the Working Paper. This deliberation is usually carried out by the Commissions and Law Research Staff of the Commission. The Commission may at this stage invite an expert at its meeting, who has knowledge of the area of reform especially where the subject matter is too technical, like finance and investment.

[197] Section 5(4) Nigerian Law Reform Commission Act 1979.

The Working Paper is further improved upon and refined to meet with the required standards. Where the Working Paper is finally prepared, it is then distributed throughout the country for careful study preparatory to discussions at the National Workshop. The Commission also sends an invitation to the general public and the Working Paper is usually attached to the invitations given to stakeholders and key speakers who are experts on the subject matter.

(d) The Workshop Stage

The Commission then organise a National Workshop, apart from the law research staff, is usually attended by stakeholders who are the major operators of the law, the Attorney-General of the Federation (Attorneys General of States where the subject matter affects states), members of the Judiciary, the Legislature, members of the Legal Profession, and representatives of other professions such as the Press.

At the Workshop, the Commissions Working Paper is discussed extensively by the participants at the workshop. Papers are usually presented by some key speakers who are experts on the subject matter. After the discussion at the workshop a Communiqué is presented and adopted at the end of the sessions of the workshop. The communiqué is in form of summary of recommendation agreed by the participants at the workshop.

(e) The Post Workshop Stage

The Commission after the Workshop, returns back to the Commission and carefully considers those relevant proposals or suggestions in certain cases which were enumerated by the various participants at the workshop. This is usually done at an evaluation meeting by the Commissioners and the law research officers of the Commission. The relevant amendments are considered after careful consideration and adopted where necessary or desirable by the Commission.

(f) Report Stage

The Commission then prepares its Report which contains the discussions and recommendations on the subject matter and it is accompanied with a Draft Bill suggesting a new legislation. Conversely, the Report may be in form of Memorandum containing only comments or legal advice/opinion on the subject matter.[198] The Commission then submits its Report to the Attorney-General of the Federation for onward transmission to the Legislative authourity. The work of the Commission ends at the point its Report is submitted to the Attorney-General of the Federation.

4.2 **The Nigerian Law Reform Commissions work since inception and how many have actually been utilized by the National Assembly or the Executive.**

The Nigerian Law Reform Commission's at the end of every reform exercise produces a report which has the inputs of experts (both within the Commission and outside the Commission), stakeholders and the general public.

Remarkably, the Commission since its inception has made some milestones in its contribution towards legislative process by undertaking large number of reform projects of various magnitudes. In carrying out these projects, the Commission ensures the widest possible consultation with various stakeholders. The Commission in carrying out its mandate, the Commission has developed procedures which come *to be known as a participatory law reform system*.[199] This refers to the direct participation of those affected most by a particular reform, to be engaged in the active participation of the reform exercises. This is achieved through Questionnaires, Field Work, Discussion Papers, Working Papers, Seminars, Conferences, National workshops, etc.[200] The establishment of the Commission is crested in the vision that Nigerian laws are modernized,

[198] Anaekwe W.O., ibid 2
[199] Focus on Law Reform (1979-1990), ibid 25
[200] Onwuasigwe Adaora, 'functions of the Nigerian Law Reform Commission and Some of its Major Achievements', (2020), unpublished, p.3

simplified and well developed to keep pace with the social, economic and political changes and norms in the Nigerian society. The implementation of the Commissions reform proposals is key towards actualizing this vision. This session will also examine the laws that resulted from the work of the Nigerian Law Reform Commission.

4.2.1 **The laws that resulted from the work of the Nigerian Law Reform Commission.**

Since inception, the Commission had been actively carrying out law reform work, unfortunately, some of its proposals were not acted upon by the government after the Commission submitted its draft Reports to through the Attorney-General of the Federation, however, some of the works of the Commission has been properly acted upon by the Executive and promulgated into law by the Legislature. The various laws which have resulted from the work of the Commission include:

(a) Uniform High Court (Civil Procedures) Rules

The Commission carried out a reform project on Civil Procedure Rules of the various High Courts in Nigeria, and concluded that there was need to create a Uniform Rules for the interest for courts and the people. On October 18th 1982, the Commission organised a symposium and conference which was largely participated by members of the Bench, including retired Justices, the Bar, and other members of the public. The majority of the participants were agreed on the necessity of the reform exercise. After thorough deliberations by the Commission, a Report was prepared in consonance with the communiqué at the symposium and conference. The Commission's Report, a Draft Bill with the High Court Rules as a Schedule was submitted to the Honourable Attorney-General on 14th February, 1984. Those submissions were not acted upon until in 1985 when the then Attorney-General, Prince Bola Ajibola, S.A.N reviewed the work and subsequently persuaded the States Military Governors and their Attorneys-General to adopt the Rules as their High Court

(Uniform Civil Procedures Rules) Edict.[201] Now the High Court (Civil Procedure) Rules of various states in Nigeria.

(b) The Decrees and Edicts promulgated on the English Pre-1900 Statutes of General Application by the Federal and States Government were based on the work of the Commission.[202] In the process, the Commission undertook a thorough study of 105 pre-1900 English Statutes then in force in Nigeria and 36 related post-1900 English Statutes (a total of 141 statutes). In addition, a wide field of current Nigerian statutes, common law and case law were examined. On 27th to 29th October, 1986, the Commission conducted a National Workshop and after its communiqué at the end of the Workshop, the Commission then prepared its Report which was submitted to the Hon. Attorney-General in March 1987. The submissions of the Commission include 24 draft statutes, i.e four draft Decrees for the Federal Government and twenty draft Edicts for the States, thus:

Federal draft Decrees

(i) Insurance Act (Amendment) Decree: this draft is to amend the Insurance Act 1976. The provisions of the draft bill were on the burden of disclosure, to the effect that the burden of disclosure in proposal form is shifted to the insurer to protect the insured. Also, a warranty or condition must be material before a breach will invalidate an insurance contract. The draft Insurance Act (Amendment) Decree was promulgated as the Insurance (Miscellaneous Provisions) Decree No. 40 of 1988, now Insurance Act 2003.

[201] Focus on Law Reform (1979-1990), ibid 30-31
[202] Anaekwe W.O, Ibid 8

(ii) Labour Act (Amendment) Decree, which abolished the common law doctrine of common employment. The draft Labour Act (Amendment) Decree was promulgated as the Labour Act (Amendment) Decree No. 27 of 1989 (now the Labour Act),

(iii) Merchant Shipping Act (Amendment) Decree, which amended the Merchant Shipping Act 1962. The draft Merchant Shipping Act (Amendment) Decree was now promulgated as the Merchant Shipping Act (Amendment) Decree No. 20 of 1988 (now Merchant Shipping Act 2007).

(iv) State Proceedings Decree, which sought to repeal the Petition of Rights Act Cap. 149. The draft State Proceedings Decree has been taken care of by section 6 of the Constitution of the Federal Republic of Nigeria, 1989 (same as in section 6 of the 1999 Constitution).

State Draft Decrees

The State draft Edits where enacted were enacted by various states based on the recommended drafts of the Commission. These Edicts include:

(i) Administration of Estate Edicts,

(ii) Applicable Laws (Miscellaneous Provision) Edict,

(iii) Apportionment Edict,

(iv) Bills of Sale Edict,

(v) Carriers Edict,

(vi) Contract Edict,

(vii) Defamation Edict,

(viii) Infants Edict,

(ix) Innkeepers and Hotel Proprietors Edict

(x) Landlord and Tenant Edit,

(xi) Law of Property Edict,

(xii) Limitation of Action Edict,

(xiii) Marred Women's Property Edict,

(xiv) Partnership Edict,

(xv) Prescription Edict,

(xvi) Sale of Goods Edict,

(xvii) State Proceedings Edict,

(xviii) Torts Edict,

(xix) Trustees Edict,

(xx) Wills Edict[203]

(c) The Companies and Allied Matters Decree, 1988.

This was one of the major projects of the Commission in 1987 as referred by the then Attorney-General of the Federation and Minister of Justice. The Commission undertook this reform work with the view to make the Company law more suitable and better to meet the needs and problems associated with the developing economic and social activities of the Nation.[204] The Commission examined the then Companies Act 1968 and the relevant principles of Common law and doctrines of equity and made their recommendations after a workshop. The Commission produced a Report which was send to a Consultative Assembly, and then it was submitted to the then Hon. Attorney-General in 1989 as a draft bill. The draft bill was then promulgated by the Military Government as

[203] Focus on Law Reform, ibid 30-43
[204] Onwuasigwe Adaora, 'functions of the Nigerian Law Reform Commission and Some of its Major Achievements', (2020), unpublished, p.8

the Companies and Allied Matters Decree No. 1 of 1990, now Companies and Allied Matters Act Cap. N118, LFN, 2004.

Interestingly, the Commission in 2007 carried out a further work on the reform of the Companies and Allied Matters Act Cap. N118, LFN, 2004. The need for reform came as a result of the need for modernisation of the law to meet the expectations of companies, investing public and the regulators. The Commission's Report on the review of the Companies and Allied Matters Act Cap. N118, LFN, 2004, including the Draft Bill, was submitted to the Honourable Attorney-General of the Federation in May, 2010. The Hon. Attorney-General in his later dated 13th August, 2012 forwarded to the Commission a revised Draft Bill for An Act to amend the Companies and Allied Matters Act, 2012 for its consideration and comments. The provisions of the revised Draft Bill are essentially the same as those of the Draft Bill previously submitted by the Commission. The Commission made an update and in September, 2012 submitted its comments and recommendation to the Hon. Attorney-General of the Federation. Since 2012, the Report of the Commission was not acted upon immediately until recently in 2020, the Federal Government through the Corporate Affairs Commission, and its Committee which comprised of the Nigerian Law Reform Commission and other stakeholders, came up with a Draft Bill that repealed and re-enacted the Companies and Allied Matters Act[205].

(d) Copyright Decree.

In 1988, the then Attorney-General of the Federation directed the Nigerian Law Reform Commission to reform Nigerian Copyright Law. The Commission carried out this work in conjunction with constituted joint effort of the Drafting Committee of the National Copyright Law.

[205] The Companies and Allied Matters Act 2020 is as a result of the work done by the Commission.

After various consultation and meetings, they came up with a draft Copyright Decree and submitted it to the then Attorney-General in December, 1988. This draft Bill was then promulgated into the Copyright Decree 1988 (No. 47 of 1988), now Copyright Act, Cap. C28, LFN 2004.

(e) Law Revision Committee

Apart from the Commission carrying out projects by itself which was eventually translated into law, it has been co-opted into various Committees that have produced laws that are implemented. By the Revised Edition of the Laws of Nigeria Decree, 1990, a committee was set up for the revision of laws of the Federation of Nigeria, 1958. The Commission played a very key role in the actualisation of the purpose for setting up the Committee, by it being a major member of the Committee. The then Chairman of the Commission, Hon. Dr. Olakunle Orojo, a member of the Committee participated very actively in the project both in Nigeria and in the United Kingdom, which resulted to the lunching of the first set of Volumes of the Laws of the Federation of Nigeria, 1990, on 1st October, 1990 by the President, Commander-in-Chief of the Armed Forces. The remaining volumes were later completed and formed part of the laws. It is important to note that it is as a result of the major role which the Commission played in this Committee that resulted to the Laws of the Federation of Nigeria, 1990.

Again, the Commission in 2001 was inaugurated as part of a Law Revision Working Committee to revise the Laws of the Federation of Nigeria, 1990. The then Attorney-General knowing the outstanding the Commission played in the birthing of the Laws of the Federation of Nigeria, 1990, in 2001, deems it fit to make the Commission a key member in the revision of the Laws of the Federation of Nigeria, 1990. This revision exercise gave birth to the sixteen volumes of the current Laws of the Federation of Nigeria, 2004. Fortunately, the Commission has been recently in 2018

inaugurated by the Attorney-General of the Federation to revise the Laws of the Federation of Nigeria, 2004. The details of which will be discussed later.

(f) Evidence Act

The Commission in 1991 was directed by the Attorney-General of the Federation to review and reform the Evidence Act[206] to ensure that the application of the Evidence Act by the users and the court is more efficient and effective in the dispensation of justice by the courts[207]. The purpose for reforming the Evidence Act was as a result of the changes in Nigeria in terms of prohibitive cost in time and money in the pursuit of litigation. The Commission conducted extensive research on the Act in order to know the defeats of the Act, and inputs of key stakeholders in areas of law of evidence were sourced by the Commission which resulted to the development of a Working Paper. The Working Paper on the Reform of Evidence Act was a tool for discussion at the National Workshop organised by the Commission in Lagos from the 23rd to 25th May, 1995. The key areas in the Working Paper were on relevancy, proof, documentary evidence, estoppel, witnesses and taking of oral evidence. Most of the Commission's recommendations in these regards were adopted and the Report submitted to the Attorney-General of the Federation in 1998. Although, the Commission's Report on the Reform of the Evidence Act was not acted upon by the Attorney-General of the Federation, fortunately, most of the Commission's proposals, as contained in its Report, have been enacted into law by the National Assembly as the new Evidence Act, 2011.

(g) The Child's Right Act

The Commission was inaugurated by the Attorney-General of the Federation as part of the Committee that reformed the laws that protects the right of children in Nigeria. The Committee

[206] Cap. 122 LFN, 1990, now Cap. E14, LFN,2004
[207] Onwuasigwe Adaora, ibid 11

drafted the Child's Right Bill which made provisions for the protection of the rights of a Nigerian child, and other related matters. Fortunately, the Bill was eventually enacted into law by the National Assembly as the Child's Right Act 2003.

(h) The Reform of Family Law in Nigeria

The Commission seeing the growing societal concern on marriage and family institutions in Nigeria, carried out extensive research on the family law in Nigeria with a view to reform it. The Commission came up with four draft Bills on Marriage, Model Customary Law and Islamic Marriage (Registration etc). After the Commissions National Workshop, the Reports were submitted to the Attorney-General of the Federation in 2007. Among the various recommendations in the Report were provisions which prohibit heterosexual cohabitation and same-sex marriage or cohabitation, as well as prohibition of adoption of same-sex marriages contracted in another jurisdiction where they are legal. This Report was also instrumental to the enactment of the Same Sex Marriage (Prohibition) Act[208], an Act which Prohibits Marriage Contract or Civil Union entered into between Persons of Same Sex, Solemnization of Same; and for Related Matters.

(i) Sentencing Guidelines

The Commission proposed a Sentencing Guideline for courts to achieve uniformity in sentencing and improve the Justice Sector service delivery in Nigeria. The essence of the Sentencing Guideline is to create a distinction between violent and non-violent crimes in terms of sentencing and that victims should be adequately compensated. Interestingly, some States has adopted this guideline as a Practice Direction for the respective courts, for instance the Cross River State. The Guidelines were developed with technical support from the United Nations Office on Drugs and Crimes

[208] [Act No. 1 of 2013]

projects in collaboration with the Nigerian Law Reform Commission (NLRC) and other national stakeholders. The development process commenced with a national stakeholder meeting to review the first draft in Uyo, the Akwa-Ibom State capital in November 2013, followed by another meeting in 2014 in Calabar, Cross River State and several reviews to bring it the final stage. The Cross River State Judiciary has made history as the first State in Nigeria to issue Sentencing Guidelines. These practice directions were signed into law by Honourable Justice Okoi Ikpi Itam, the Chief Judge of Cross River State on 8 August 2016.[209]

Although, the Commission since inception in 1979 has been active in carrying out reform projects, yet it is unfortunate that the Report of the Commission had been poorly implemented.

4.2.2. **The ongoing research or reform projects by Nigerian Law Reform Commission**

The Commission recently in 2018 carried out major law reform projects and they include:

(a) Revision of the Laws of the Federation of Nigeria, 2004.

As stated previously, a committee was set up for the revision of laws of the Federation of Nigeria, 1958 by virtue of the Revised Edition of the Laws of Nigeria Decree, 1990, The Commission played a very key role in the actualisation of the purpose for setting up the Committee, by it being a major member of the Committee. Similarly, the in 2001, the then Hon. Attorney of the Federation inaugurated a Law Revision Working Committee to revise the Laws of the Federation of Nigeria,

[209] https://www.unodc.org/nigeria/en/cross-river-state-judiciary-makes-history--issues-sentencing-guidelines-developed-with-support-of-eu-and-unodc.html accessed on 10th January, 2022

1990. The Commission also participated in this Committee which prepared the sixteen volumes of the Laws of the Federation of Nigeria, 2004.[210]

In 2018, the Commission embarked on a project to revise the Laws of the Federation 2004 with the view to remove spent and repealed Acts; consolidation existing Acts and their various Amendments and Subsidiary Legislation; and publishing updated Laws of the Federation of Nigeria. The reason for the revision exercise is to update the laws of the Federation and to make administration of justice effective and efficient.

In carrying this project, firstly, the Commission trained and equipped the members of the Commission, Law Research Officers and other Staff on the fundamentals for the Law Revision exercise, and also informed the members of the public to provide useful information that may enhance its law revision project.

Secondly, the Commission collected, sorted and collated data (Both hardcopies and soft copies Acts of the National Assembly and its Subsidiary Legislation from 2002 – 2018 and relevant Judicial Decisions) from the National Assembly, the Supreme Court of Nigeria, Government Printing Press, Ministries, Departments and Agencies of the Federal Government of Nigeria, LexisNexis Butterworths Ltd; etc.

Thirdly, on 19th June, 2018, the Commission organised a National Workshop to gather inputs from stakeholders such as the Executive, Legislature, Judiciary, etc, to enhance the revision exercise.

The Commission also coopted Legal Consultants (from different States of the Federation) and Review Working Groups (Comprised of the Law Research Officers of the Commission) to identify

[210] Onwuasigwe Adaora, 'functions of the Nigerian Law Reform Commission and Some of its Major Achievements', (2020), unpublished, p.10

Acts that are either amended, repealed, omitted (in the 2004 LFN), obsolete, or spent, they are also to identify typographical errors and recommend relevant areas for reform and revision of the LFN 2004.

This project has gone through so many other stages which include, Consolidation of various amendments of Acts and Subsidiary Legislation, Cap. renumbering for easy cross-referencing of the Acts in the Laws of the Federation of Nigeria.

Although, the work has been delayed by the outbreak of Covid-19 pandemic, yet the Commission in its enthusiasm had continued the process up till 2022, of which the work is at its last stage of proofreading of the printed dummy copies of the Laws.

4.2.3. **Other major projects by the Commission - 2018 till date**

(a) Reform of the Code of Conduct Bureau and Tribunal Act[211];

(b) Reform of Tax Laws in Nigeria: Companies Income Tax Act[212];

(c) Completion of the Reform and Unification of the Criminal Code[213] and Penal Code;[214]

(d) Research and Pre-Workshop activities on Reform of the Central Bank of Nigeria (Establishment) Act 2007[215];

(e) Reform of the Personal Income Tax Act[216] and Personal Income Tax (Amendment) Act, 2011.

[211] Cap. C15, LFN, 2004
[212] Cap. C21, LFN, 2004
[213] Cap. C38 LFN 2004
[214] Cap. 532 Laws of Abuja 1990
[215] Cap. C4, LFN 2004
[216] Cap. P8 LFN 2004

(f) The most current reform project of the Commission is the Reform of the Personal Income Tax Act[217] and Personal Income Tax (Amendment) Act, 2011.

On 2nd of March, 2022 the Commission embarked on a National Stakeholders Workshop to elicit information from major stakeholders to consider the areas of reform. The need for the reform was reiterated by the Attorney-General of the Federation (AGF) and Minister of Justice, Abubakar Malami, who disclosed this in Abuja on Tuesday at the national stakeholder's workshop on the Reforms of Tax Laws, where he said the reform, is essential for the continuous relevance of the laws. The Chairman of the Nigeria Law Reform Commission (NLRC), Professor Jummai Audi in her opening remark also affirmed that the personal income Amendment, PITAM 2011 urgently need to be reviewed to provide clarity and improvement to the tax administration in Nigeria.

According to Professor Audi, the areas that need immediate review was that tax authorities should be mandated to first obtain a warrant from a court before they can enter and search premises involved in tax offences.

"Employee expenditure on training and development, research and necessary travelling expenses should be part of the allowable deduction," Professor Audi said.[218]

4.3 **Impact of the Nigerian Law Reform Commission in the overall growth of Nigerian law and the modernization process and the imperative for retaining the Nigerian Law Reform Commission.**

The extent and benefits of Commission contribution to the shaping of legislative process to suit the changing economic, political, social and legal environments are enormous. These characteristics of the Commission are such that it contributes to the development of legislative process. Although,

[217] Cap. P8 LFN 2004

[218] <https://guardian.ng/news/fg-flags-defective-tax-laws-for-reforms/> accessed on 3rd March, 2022.

law making is the constitutional responsibility of the Legislature, the input by the Nigerian Law Reform Commission is an essential part of the modernization and law-making process. The Commission has many advantages which has great impact on legislative process and the modernization of law in Nigeria, and it includes:

(a) Independence

The Nigerian Law Reform Commission is independent of the government that created it because it has a particular value impartiality and its reform objectives are not just independent of the government views, but of all other interest groups. The establishment of the Nigerian Law Reform Commission as a distinct body from the government apparatus is predicated on the assumption that its independent thinking will produce just and efficient law. The Executive and the Legislature frequently need and value specialist advice in the planning and formulation of law reform. This advice is best provided by an independent body,[219] such as the Nigerian Law Reform Commission. Due to its independence, it possesses the capacity to make objective, innovative and unbiased reform proposals which is eventually translated into a legislation through a legislative process. The reason why this is possible is that the Commission not being affiliated to any political party may in its consultation reach out to every other political party who are stakeholders. Importantly, the Commissions willingness to make findings and recommendations to government without fear or favour shows the Commissions intellectual independence and not being politically affiliated to the government.

(b) Expertise

The Nigerian Law Reform Commission is experts advisory body with knowledge and specialty in the review various areas of law and to recommend changes. The Commissions work includes

[219] Michael Sayers, 'Law Reform: Challenges and Opportunities', [2009], ibid 7

development of the law by identifying areas of law that need reform due to its defect and obsolete nature, and putting those laws in line with the present reality and best practices. It then means that the Commissioners and research staff of the Commission are recruited based on this expertise eligibility. Sayer[220] added that the Commissioners are high quality lawyers from the judiciary, from academic backgrounds, from private practice, and many were in positions of considerable eminence before serving on the Commission, and many go on to such positions afterward. The legal staff and other staff often have invaluable skills and experience.

The Commissions methods ensure that its recommendations are thoroughly worked through before they reach the Government and the Legislature. The Commissions publications, and especially the final reports on reform proposals, are authoritative documents. They provide current and updated review of the status of a particular law and they also make recommendations which are usually in form of a final report on the reform proposals. Such reports are then sent to the Attorney-General of the Federation, who transmits it to the Legislature through an Executive Bill.

Another area of this expertise is on the quality of the Report of the Commission. The quality of the Commission's work is hinged on the various inputs by experts both in the Commission and outside the commission, stakeholders' views and the public opinions. The work of the Commission is such that demands thoroughness and which will enhance the legislative process.

(c) Continuity

The Commission is continuous in its nature and it is an attribute which enhances legislative process. The continuity of the Commission enables it to ensure that there is a standing body independent expert who are knowledgeable and possess specialty in area of law reform. The Commission as a

[220] Ibid 9

standing body has the capacity to ensure a consistent approach both to particular areas of law and to the law reform process, which is otherwise most unlikely. The Commission also has capacity to build library of large modern storage which are efficient and effective to law reform and legislative process.

(d) Focused Goal

The primary goal of the Nigerian Law Reform Commission is the systematic and progressive development and reform of the law. This makes the Commission to be more focused on this purpose by channeling its energy, time and expertise towards achieving this purpose. The Commission can concentrate its energy and resources on a single purpose and is saved from the distractions, disruptions and trouble-shooting faced by many other bodies, not least by Governments and Ministers and their Ministries all over the world. According to Michael Sayer[221], that is one reason why law reform tends to lag behind other priorities unless there is a Law Reform Agency (Nigerian Law Reform Commission), which is able to devote its resources, time and energy to this purpose.

The main policy thrust of the Commission is to deliver quality law reform to the nation within the purview of its statutory mandate and policy framework of the government. The Commission monitors the laws with a view to effecting necessary changes to make them modern, fair, just, and efficient to attain developmental objectives of the government and to conform with the Nations international obligations, through constant research and analysis of the law and public consultation[222]. Ezeobi echoed this in his remarks by saying that "in every honesty, the establishment of the Nigerian Law Reform Commission was indeed a truly inspired vision, promoting in a radically new way the right of the populace to laws which are intelligible, accessible

[221] Michael Sayers, 'Law Reform: Challenges and Opportunities', [2009], ibid 10
[222] Onwuasigwe Adaora, 'functions of the Nigerian Law Reform Commission and Some of its Major Achievements', (2020), unpublished, p.3

and which meet their needs. The Commission has achieved quite a remarkable impact in large areas of our national life in pursuit of that principle.

4.3.1. **Major Challenges of the Commission militating against Legislative Process**

There are factors that have been identified even by previous writers such as Michael Sayer[223], Anaekwe[224], Okonkwo[225] and many others, and they affect the impact of the Nigerian Law Reform Commission in the overall growth of Nigerian law and the modernization process. Apart from Low Budgeting and Inadequate Funding, Poor Infrastructure, the most challenging factor identified is Poor Implementation of the Commission's Report. Although there are other challenges which the Commission experience, yet this work will only consider the major challenge of Poor implementation of the Commission's Report and the various factors that results to Poor implementation of the Commission's Report.

4.3.1.1. **The Relegation of the Commission and Poor Implementation of the Commission's Report**

Despite the impact of the Commission in the overall growth of the Nigerian law and the modernisation process yet it has been discovered that there is a great neglect of the impact of the commission in legislative process and as a key justice institution body. As well noted above, most attention has been shifted towards the legislature and its legislative process, while the Commission that has greatly impacted in the legislative process is relegated and thus leading to the poor implementation of the of the Commission's Report. As stated earlier, the Commission has achieved

[223] Michael Sayers, 'Law Reform: Challenges and Opportunities', [2009], ibid 14
[224] Anaekwe W.O, 'Implementation of Law Reform Proposals, the Nigerian Experience' (1996), ibid 4
[225] Okonkwo. C. O, 'The Imperatives of Law Reform in the Law Making Process' (2012), ibid 16

a lot, yet the Commission has been relegated and there had been poor implementation of the Commission's Report.

The factors which amount to poor implementation are numerous. Those factors include, the Structure of the Establishment Act, the Unwillingness of the Attorney-General of the Federation to transmit the Commission's Report and the Relationship Gap between the Commission and the Legislature. These factors will be discussed briefly.

(a) The Structure of the Establishment Act

The Nigerian Law Reform Commission Act is structured in a way that the Commission's Report only goes the Legislature through the Attorney-General of the Federation and once the Commission had submitted its Report to the Attorney-General of the Federation, the work of the Commission ends. Anaekwe[226]describes the Attorney-General as the 'bridge' between the Commission and the Legislative authority. The question of what then happens after the Commission submits its Report to the Attorney-General of the Federation is only that of the Attorney-General to answer. Even the establishment Act is oblivious of this fact as it leaves room for an assumption that the Attorney-General will transmit such Reports to go through legislative processes. The Attorney-General is not bound under the Act to transmit same to the legislative authority and the also the Act fails to provide for time limit within which the Report is to be transmitted by the Attorney-General. This is a major loophole in the establishment Act as it gives an assumption that such Reports would be acted upon timeously by the Attorney-General of the Federation. This lack of making provision for time limit within which the Attorney-General will submit the Reports of the Commission has severally amounted to delay and non-implementation of the Reports of the Commission. Conversely, some other Countries had overcome this challenge of lack of time limit. For example, Australian,

[226] Anaekwe W.O., ibid 4

Victorian, Canadian Law Reform Commission law has made adequate provisions for the transmission of the various Reports to their Legislative authority. In Australia, by section 23 of The Australian Law Reform Commission Act 1996[227] The Attorney-General must cause each report and interim report of the Australia Law Reform Commission on a matter that is the subject of a reference to be tabled in each House of the Parliament within 15 sitting days of that House after the Attorney-General receives it. The Canada Law Commission Act has similar provisions like the Australia, particularly in section 24 and 25 of the Law Commission of Canada Act[228] provides that the Canadian Minister of Justice shall cause a copy of any report of the Law Commission of Canada to be tabled in each House of their Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it. The Canadian Minister of Justice shall cause a copy of the Minister's response to any report of the Law Commission of Canada to be tabled in each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister gives the response to the Law Commission of Canada. Furthermore, section 21 (4) of the Victorian Law Reform Commission Act 2000[229], provides that the Victorian Attorney-General must cause a copy of every interim or final report of the Victorian Law Reform Commission submitted to him or her to be laid before each House of the Parliament within 14 sitting days of that House after he or she receives the report. Unfortunately, these provisions are lacking in the Nigerian Law Reform Commissions Act.

(b) The Unwillingness of the Attorney-General of the Federation to transmit the Commission's Report.

[227] No. 37, 1996 as amended, Includes amendments up to: Act No. 62, 2014
[228] S.C. 1996, c. 9 Assented to 1996-05-29
[229] No. 44 of 2000 Version incorporating amendments as at 1 July 2015

As observed by Anaekwe, during the periods 1979 to 1983, there was no reference for reform given by the Attorney-General (except a reference on Adoption of the Federal Laws of Nigeria with the 1979 Constitution).[230] Notwithstanding, that the Commission may receive reference from the Attorney-General of any proposals for the reform of the law, it may also on its initiatives[231], carry out a reform exercise, hence the Commission initiated the reforms of some laws and submitted its final reports to the then Attorney-General of the Federation. These laws include Reports on Marriage, Prisons and Sentencing Laws or guidelines. Unfortunately, not one of the reform proposals saw the light of the day and no reason was given for such inaction. The only reasonable and inevitable conclusion to be drawn from such inaction appears to be unwillingness or lack of enthusiasm on the part of the then Attorney-General.[232] Whereas, shortly after the inauguration of the reconstituted Commission in 1985, the Commission had detailed discussion with the then Hon. Attorney-General of the Federation and Minister of Justice, Prince Bola Ajibola, on the work of the Commission and especially the urgent need to pursue a more vigorous law reform programme. Conversely, within the period 1985-1991, the Commission recorded the highest achievement both in terms of getting references from the Attorney-General and having its reform proposals translated into legislation.[233]

It is important to note that the way the Commissions Act is structured, the work of the Commission revolves around the Attorney-General of the Federation and where the Attorney-General is unwilling and fails or neglects to act accordingly, the Reform Reports proposals by the Commission no matter how sound and elegant will end being an abandoned project.

(c) The Relationship Gap between the Commission and the Legislature.

[230] Ibid 7
[231] Section 5(2)
[232] Ibid 7
[233] Ibid 8

There seems to be a loophole in the Act as to the communication relationship between the Commission and the Legislature, which has resulted to the poor implementation of the Commission's Reports. The Act does not allow the Legislature to give reference for reform, like the Attorney-General of the Federation, to Commission. Also, the Act does not authorise the Commission to submit its Reports directly to the National Assembly, and until the Report is tabled before the Legislature, the Legislature may not know the extent of work which has been carried out by the Commission. This loophole has resulted to the poor implementation of commission's report.

Importantly, the reasons the Commission recorded such a huge success during the military era is not just hinged on the willingness of the then Attorney-General of the Federation, but also the fact that the Attorney-General during the military era is a member of the Supreme Military Council which is the Legislature during the military era. The presence of the Attorney-General in the Supreme Military Council during the military era, helped in ensuring that the Commissions reports are well implemented and promulgated into law. Therefore, where the Reports of the Commission is submitted to the Legislature, then it will facilitate the implementation of the work of the Commission.

It is important to note that Reform Reports proposals by the Commission no matter how sound and elegant will end up on the executive shelves, being an abandoned project, unless it is acted upon by the legislature passing through legislative process.

4.4. **The New Dawn for the Structure of the Commission**

This research work is based on the Nigerian Law Reform Commission Act 1979, CAP. N118, consequently, the discovery of the fact that the Act has been repealed and re-enacted by the Nigerian Law Reform Commission (Repeal and Re-Enactment) Act 2022 which has recently been assented by the President Muhamadu Buhari, the President of the Federal Republic of Nigeria. Section 5(1)

of the instant Act expanded the functions of the Commission to now include research and also receive and consider any proposal for the reform of the law which made or referred to it by the Attorney-General of the Federation or the National Assembly. It may also prepare on its own initiative and submit to the Attorney-General and the National Assembly programme for the examination of different branches of the law with a view to reform. The Commission shall undertake as approved by the Attorney-General of the Federation or the National Assembly the examination of particular branches of the law and the formulation, by means of draft legislation or otherwise, of proposal for reform. It may also prepare at the request of the Attorney-General or the National Assembly, comprehensive programme of consolidation and statue law revision and undertake the preparation of draft legislation pursuant to any programme approved by the Attorney-General or the National Assembly. The Commission may also provide training on law reform and other related matters for a fee.

Consequently, Section 5(7)(a) is to the effect that where the Attorney-General refers or approves a programme for the Commission, the Attorney-General shall lay before the Federal Executive Council any report prepared by the Commission pursuant to such programme, and after expiration of 3 months from the date of submission of the Commission's report to the Attorney-General, the Commission shall forward same to the National Assembly.

The instant Act seems to have confers some level of autonomy on the Commission in discharging its responsibilities of reviewing any proposal for the reform of laws and to align its mandate with global best practices. It will also ensure that the Commission presents a detailed report of its

activities to the National Assembly.[234] The coming into effect of the instant Act addressed the following:

(a) The Structure of the Establishment Act

The Nigerian Law Reform Commission Act is now structured in a way that the Commission shall receive and consider any proposals by the Attorney-General of the Federation or the National Assembly. The Commission may prepare on its own initiative and submit a reform proposal to the Attorney-General of the Federation and the National for the reform of laws. The Commission among other things shall undertake based on the recommendations approved by the Attorney-General of the Federation or the National Assembly, the examination of particular branches of the law, formulating a draft legislation, consolidation and law revision of statutes. These provisions make it possible for the Commission to be able to have a more solid relationship with not just the Attorney-General of the Federation, but also the National Assembly.

(b) The question of what happens after the Commission submits its Report to the Attorney-General of the Federation

The question as to what happens after the Commission submits its Report to the Attorney-General of the Federation is answered by the recent Act. This particular question has been begging to be answered since the establishment of the Act in 1979. The instant Act under section 5(7)(a) is to the effect that where the Attorney-General of the Federation receives the Report of the Commission, the Attorney-General of the Federation lays before the Federal Executive Council and after the expiration of 3 months from the date of submission of the Commission's report to the Attorney-General of the Federation, the Commission shall forward same to the National Assembly. This

[234] <https://placng.org/i/senate-passes-the-nigerian-law-reform-commission-repeal-and-re-enactment-bill-2018/> accessed on 23rd March, 2022

particular empowers the Commission to bypass the Attorney-General of the Federation, by forwarding its Report to the National Assembly after 3 months from the date of submission of the Commission's report to the Attorney-General of the Federation. Consequently, after the expiration of 3months from the date of submission to the Attorney -General of Federation, the Commission shall forward same Report to the National Assembly, as have been previously sent to the Attorney-General of the Federation. However, there is no time frame within which the Attorney-General of the Federation will lay the Commission's Report to the Federal Executive Council. The Commission is left with no choice but to stay and wait for 3 months before it may forward same Report to the National Assembly upon the failure of the Attorney-General submitting first to the Federal Executive Council. The duration of 3 months is a long time to wait for such important Report of the Commission that tends to address current challenges which requires urgent attention. The time frame of 3 months may not also encourage the enthusiasm of the Attorney-General of the Federation responding swiftly to the Report of the Commission. This is an issue which must be addressed if not it may result also to poor implementation of the Commission's Report which the current Act sought to address. If not addressed, it then means that Commission has to wait for 3 months before its Report is forwarded to the appropriate authority for implementation.

Again, the new Act may also have failed to address the independence of the Commission. The Commissions Act makes the Commission to be largely dependent on the Attorney-General of the Federation. The Commission being under the Attorney-General of the Federation may not allow the Commission to actualise its full mandate. This issue may be addressed by placing the Commission under the Presidency to grant the Commission independence towards the full actualisation of the Commissions mandate.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATION

In this Chapter, the summary of the findings in this research project are presented based on the data analysed in the previous Chapters. Conclusions are drawn from the findings made; while recommendations are made for implementation of the research findings, more particularly on the need for a review of the Nigerian Law Reform Commission Act to enhance its impact on Legislative Process. Furthermore, the contribution of this research to the existing legal knowledge is pointed out, and suggestions for further studies are as well proffered.

5.1. **Summary of Findings**

The objectives of this research work are:

1. **The Nigerian Law Reform Commission (NLRC) organizational structure and its operation.**

The researcher started by tracing the historical development of the Commission in Nigeria. It was observed that prior to the establishment of the Commission in 1979, the Commission had no organizational structure as various governments at both states and federal levels carried out law reform through the medium of ad-hoc committees and commissions. And this arrangement lacked coherence and coordination and failed to adequately confront the task of the law reform, hence the establishment of the commission in 1979. The historical development is traced in phases, from 1979 to 1984 as the first Commission which had the Chairman, four full time and two part time Commissioners as members and the Secretary; the constitution of the Commission in 1985 as the second Commission which was as a result of the amendment of the Commissions act in 1985 with the a Chairman and three other full time Commissioner as members; the third Commission which was constituted in 1988 to the year 1990 with the Chairman and three other full time Commissioners

as members, except for the years 1990 when the Commission had just a Chairman and two full time Commissioners as members. The researcher observed that since 1986, it has been the practice of the Commission to assign responsibility to Commissioners to oversee Departments and Divisions while the Chairman coordinates and oversees the work of the Commission generally.[235] Although, the Commissioners are assigned with the responsibilities to oversee the departments, the various Directors are allowed to run the day-to-day activities of each department. The Nigerian Law Reform Commission Act was amended in 1999 to provide for the appointment of a Secretary to the Commission by the President, on the recommendation of the Honourable Attorney-General of the Federation and Minister of Justice. Section 8(1) of the Nigerian Law Reform Act created the office of the secretary to the commission. The Secretary is to assist the Honourable Chairman with the day-to-day administration and management and any other such duties as may be directed from time to time by the commission.[236]

On the operation procedure of the Commission, the researcher observed the various stages of law reform by the Commission:

(a) Identification Stage

This is the preliminary stage and it may also be called the review or reform stage. Here, the Commission identifies areas where reforms are urgently required. This is done by identifying those anomalies in the system and making proposals for reform.

[235] Ibid 10
[236] Ibid 9

(b) Research Stage

After the Commission has identified areas which need reform, it then carries out a more detailed study on the subject matter, by first looking at the provisions of the Constitution and other laws to ascertain the adequacy in the subject matter. In carrying an in-depth study, the Commission consults wide range of stakeholders on the subject matter. The various information gathered above helps the Commission in preparing a Working Paper.

(c) Pre-Workshop Stage

At this stage the Commission seats in a research meeting to deliberate extensively on the Working Paper. This deliberation is usually carried out by the Commissions and Law Research Staff of the Commission. Where the Working Paper is finally prepared, it is then distributed throughout the country for careful study preparatory to discussions at the National Workshop.

(d) The Workshop Stage

The Commission then organise a National Workshop, apart from the law research staff, is usually attended by stakeholders who are the major operators of the law, the Attorney-General of the Federation (Attorneys General of States where the subject matter affects states), members of the Judiciary, the Legislature, members of the Legal Profession, and representatives of other professions such as the Press. After the discussion at the workshop a Communiqué is presented and adopted at the end of the sessions of the workshop. The communiqué is in form of summary of recommendation agreed by the participants at the workshop.

(e) The Post Workshop Stage

The Commission after the Workshop, returns back to the Commission and carefully considers those relevant proposals or suggestions in certain cases which were enumerated by the various participants at the workshop.

(f) Report Stage

The Commission then prepares its Report which contains the discussions and recommendations on the subject matter and it is accompanied with a Draft Bill suggesting a new legislation. Conversely, the Report may be in form of Memorandum containing only comments or legal advice/opinion on the subject matter.[237] The Commission then submits its Report to the Attorney-General of the Federation for onward transmission to the Legislative authourity. The work of the Commission ends at the point its Report is submitted to the Attorney-General of the Federation.

2. The Interrelationship between the work of the Nigerian Law Reform Commission and the National Assembly.

The researcher in Chapter Four considered the interrelationships between the work of the Nigerian law Reform Commission and the National Assembly and it was discovered that the Legislature and the Commissions shares relationship in the area of legislative process through bill scrutiny. Till date, the Legislature in performing its function consults the Commission and seeks input of the Commission on the provisions of the Bill before them. This relationship is not borne as a result of any provisions by the Nigerian Law Reform Commission Act 1979, but by mere convention. The discoveries of some of those Bills scrutinized by the Commission from the National Assembly between 2010 to 2020 were also listed under this chapter.

For the purposes of carrying out a reform project, the Commission may receive and consider any proposals for the reform of the law which may be made or referred to it by the Attorney-General of the Federation or may prepare on its own initiative and submit to the Attorney-General, from time to time, programmes for the examination of different branches of the law with a view to reform or

[237] Anaekwe W.O., ibid 2

may provide advice and information to Federal Government departments and other authorities or bodies concerned, at the instance of the Federal Government, with proposals for the reform or amendment of any branch of the law. The various stages in carrying out law reform projects were also discovered.

The researcher looked into those laws that resulted from the work of the Nigerian Law Reform Commission. This work discovered that since inception, although the Commission had been actively carrying out law reform work, unfortunately, some of its proposals were not acted upon by the government after the Commission submitted its draft Reports through the Attorney-General of the Federation. Majority of the works of the Commission which has been properly acted upon by the Executive and promulgated into law by the Legislature were during the military era. Again, remarkably, the Commission from 2018 till date had carried out law reform projects and the major ongoing research or reform projects by the Nigerian Law Reform Commission is the Revision of the Laws of the Federation of Nigeria, 2004.

3. The NLRC function within the Nigeria executive arm superstructure

On this objective the researcher observed that although, the various bodies may perform the function of law reform, yet the most accepted option for law reform is that which is performed either through a Law Reform Agency (LRA), Law Reform Commission, Law Reform Commission, Law Commission or Law Review Committee, as the case maybe, depending on the jurisdiction. In Nigeria, we have the Nigerian Law Reform Commission. The functions of the Commission are mainly contained in sections 5 and 7 of the Act.[238] The functions of the Commission cumulate its mandates. The functions of the Commission include generally:

[238] Cap. N118 LFN 2004.

"…to take and keep under review all Federal Laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of Nigerian society including, in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with changes in the machinery of the administration of justice and generally the simplification and modernization of the law."

To discharge its statutory functions, the Nigerian Law Reform Commission receives and considers any proposals for the reform of the law which may be made or referred to it by the Attorney-General of the Federation.[239] The Commission not being a law-making body, means that its proposal for reform must be laid before the President by the Attorney-General. The President thereafter submits it to the Federal Executive Council and after which it is submitted to the legislature as an Executive Bill. This procedure is modeled after the British system, but the difference is that, in Britain the Prime Minister and the Attorney General are members of the Parliament. In Nigeria however, neither the President nor the Attorney General is a member of the National Assembly.[240] The functions of the Commission are not restricted to reform Federal laws, as they may also consider proposals for reform of state laws from any state, group of states or all the states in the Federation and submit reports to the appropriate Attorney-General or Attorneys-General.[241] The Commission on its own initiative or upon request from any state or states, consider or put forward proposals for the consideration of the States' Attorneys-General, or such number of them as may be appropriate in the circumstances, for uniformity between the laws of the states or, as the case may require, the

[239] Section 5(2)(a)
[240] Ibid 47
[241] Section 7 (1)

group of states concerned. In such situation of request by state or states the financial burden shall be borne by the Government of the state concerned or as the case may be, the Governments of the States concerned.[242]

4. The ways which the NLRC impacted in the overall growth of the Nigerian law and the modernisation process.

The researcher in Chapter four noted the advantages of the establishment of the Commission which has great impact on legislative process and the modernization of law in Nigeria the imperative for retaining the NLRC. These advantages of the Commission are such that it contributes to the development of legislative process. These advantages which had impacted to the overall growth of the Nigerian law and modernization process include:

(a) Independence

The Nigerian Law Reform Commission is independent of the government that created it because it has a particular value impartiality and its reform objectives are not just independent of the government views, but of all other interest groups. The establishment of the Nigerian Law Reform Commission as a distinct body from the government apparatus is predicated on the assumption that its independent thinking will produce just and efficient law. The Executive and the Legislature frequently need and value specialist advice in the planning and formulation of law reform. This advice is best provided by an independent body,[243] such as the Nigerian Law Reform Commission. Due to its independence, it possesses the capacity to make objective, innovative and unbiased reform proposals which is eventually translated into a legislation through a legislative process. The

[242] Section 7(2) and (3)
[243] Michael Sayers, 'Law Reform: Challenges and Opportunities', [2009], ibid 7

reason why this is possible is that the Commission not being affiliated to any political party may in its consultation reach out to every other political party who are stakeholders.

(b) Expertise

The Nigerian Law Reform Commission is experts advisory body with knowledge and specialty in the review various areas of law and to recommend changes. The Commission's work includes development of the law by identifying areas of law that need reform due to its defect and obsolete nature, and putting those laws in line with the present reality and best practices. It then means that the Commissioners and research staff of the Commission are recruited based on this expertise eligibility.

Another area of this expertise is on the quality of the Report of the Commission. The quality of the Commission's work is hinged on the various inputs by experts both in the Commission and outside the commission, stakeholders' views and the public opinions. The work of the Commission is such that demands thoroughness and which will enhance the legislative process. **(c) Continuity**

The Commission is continuous in its nature and it is an attribute which enhances legislative process. The continuity of the Commission enables it to ensure that there is a standing body independent expert who are knowledgeable and possess specialty in area of law reform. The Commission as a standing body has the capacity to ensure a consistent approach both to particular areas of law and to the law reform process, which is otherwise most unlikely. The Commission also has capacity to build library of large modern storage which are efficient and effective to law reform and legislative process.

(d) Focused goal.

The primary goal of the Nigerian Law Reform Commission is the systematic and progressive development and reform of the law. This makes the Commission to be more focused on this purpose by channeling its energy, time and expertise towards achieving this purpose. The Commission can concentrate its energy and resources on a single purpose and is saved from the distractions, disruptions and trouble-shooting faced by many other bodies, not least by Governments and Ministers and their Ministries all over the world. According to Michael Sayer[244], that is one reason why law reform tends to lag behind other priorities unless there is a Law Reform Agency (Nigerian Law Reform Commission), which is able to devote its resources, time and energy to this purpose.

5. The relegation of the Commission and poor implementation of the Commission's report

The researcher observed in Chapter four that despite the impact of the Commission in the overall growth of the Nigerian law and the modernisation process yet it has been discovered that there is a great neglect of the impact of the commission in legislative process and as a key justice institution body. As well noted above, most attention has been shifted towards the legislature and its legislative process, while the Commission that has greatly impacted in the legislative process is relegated and thus leading to the poor implementation of the of the Commission's Report. As stated earlier, the Commission has achieved a lot, yet the Commission has been relegated and there had been poor implementation of the Commission's Report.

This work discovered that the major challenge of the Commission are relegation and poor implementation of the Commission's Report and the various factors that results to Poor implementation of the Commission's Report were discovered and these factors result are as a result of the defects in the Nigerian Law Reform Commissions Act. They include: the Structure of the

[244] Michael Sayers, 'Law Reform: Challenges and Opportunities', [2009], ibid 10

Nigerian Law Reform Commission Act 1979, The Unwillingness of the Attorney-General of the Federation to transmit the Commission's Report and the Relationship Gap between the Commission and the Legislature. These are the reasons that necessitate the review of the Nigerian Law Reform Commission Act 1979.

Under this objective, the researcher made a major discovery of the fact that the Act which this work is based on, the Nigerian Law Reform Commission Act 1979, has been repealed and re-enacted by the Nigerian Law Reform Commission (Repeal and Re-Enactment) Act 2022 as recently assented by the President Muhamadu Buhari, the President of the Federal Republic of Nigeria. The instant Act confers some level of autonomy on the Commission in discharging its responsibilities of reviewing any proposal for the reform of laws and to align its mandate with global best practices. It will also ensure that the Commission presents a detailed report of its activities not just to the Attorney-General of the Federation but also to the National Assembly. By this Act, the Commission is now structured in a way that it shall receive and consider any proposals by the Attorney-General of the Federation or the National Assembly. The Commission may prepare on its own initiative and submit a reform proposal to the Attorney-General of the Federation and the National for the reform of laws. The Commission among other things shall undertake based on the recommendations approved by the Attorney-General of the Federation or the National Assembly, the examination of particular branches of the law, formulating a draft legislation, consolidation and law revision of statutes. These provisions make it possible for the Commission to be able to have a more solid relationship with not just the Attorney-General of the Federation, but also the National Assembly.

Conclusion

This research work has exposed, for the benefits of law reformers, legislature and judiciary, the impact of the Nigerian Law Reform Commission in Legislative process. In the course of this work

the interrelationships between the work of Nigerian Law Reform Commission and the National Assembly, how the NLRC faired during the military era, the NLRC function within the Nigerian executive arm superstructure, how much work of the NLRC have they carried out since inception and how many have actually been utilized by the National Assembly or the Executive, the laws that resulted from the work of the NLRC, the ways which the NLRC impacted in the overall growth of Nigerian law and the modernization process, the imperative for retaining the NLRC, were critically analysed. It is believed that with this research work, any law reformer or legislature who embarks on this nature of research can find great insight on how the Nigerian Law Reform Commission has impacted on legislative process and the imperative for retaining the Commission.

The significance of this work is that it is the first of its kind in Nigeria in the sense that there has not been, to the knowledge of the writer, any published work devoted solely on the appraisal of the impact of the Nigerian Law Reform Commission in legislative process. Therefore, law reformers, legislature or judges may find it as a useful guide. Secondly, comparative study of the provisions of the statute establishing law reform commission of some of other jurisdictions has shown how much the Nigerian Law Reform Commission Act 1979 desired review and improvement. For instance, the Nigerian Law Reform Commission Act 1979 was structured in a way that the Commission's Report only goes the Legislature through the Attorney-General of the Federation and once the Commission had submitted its Report to the Attorney-General of the Federation, the work of the Commission ends. The question of what then happens after the Commission submits its Report to the Attorney-General of the Federation was only that of the Attorney-General to answer. The Act lacked provision for time limit within which the Attorney-General will submit the Reports of the Commission to the Legislature and this has severally amounted to delay and non-implementation of the Reports of the Commission. The Act then did not allow the Legislature to give reference for reform, like the Attorney-General of the Federation, to Commission. Also, the

Act did not authorise the Commission to submit its Reports directly to the National Assembly, and until the Report is tabled before the Legislature, the Legislature may not know the extent of work which has been carried out by the Commission. This loophole has resulted to the poor implementation of commission's report.

With respect to the Nigerian Law Reform Commission Act 1979, this work has demonstrated that there have been good reasons for the review of the establishment Act. The result of the appraisal of the impact of the Commission in legislative process shows that the Act needs serious update in other to enhance the impact of the Commission in legislative process. Although, recent discovery of this research work shows the fact that the Act has been repealed and re-enacted by the Nigerian Law Reform Commission (Repeal and Re-Enactment) Act 2022 which has recently been assented by the President Muhamadu Buhari, the President of the Federal Republic of Nigeria. The coming into effect of this new Act seems to have addressed the following:

(a) The Structure of the Establishment Act

The Commission under the instant Act is now structured in a way that the Commission shall receive and consider any proposals by the Attorney-General of the Federation or the National Assembly. The Commission may prepare on its own initiative and submit a reform proposal to the Attorney-General of the Federation and the National for the reform of laws. The Commission among other things shall undertake based on the recommendations approved by the Attorney-General of the Federation or the National Assembly, the examination of particular branches of the law, formulating a draft legislation, consolidation and law revision of statutes. These provisions make it possible for the Commission to be able to have a more solid relationship with not just the Attorney-General of the Federation, but also the National Assembly.

(b) The question of what happens after the Commission submits its Report to the Attorney-General of the Federation

The question as to what happens after the Commission submits its Report to the Attorney-General of the Federation is answered by the recent Act. This particular question has been begging to be answered since the establishment of the Act in 1979. The instant Act under section 5(7)(a) is to the effect that where the Attorney-General of the Federation receives the Report of the Commission, the Attorney-General of the Federation lays before the Federal Executive Council and after the expiration of 3 months from the date of submission of the Commission's report to the Attorney-General of the Federation, the Commission shall forward same to the National Assembly. This particular empowers the Commission to bypass the Attorney-General of the Federation, by forwarding its Report to the National Assembly after 3 months from the date of submission of the Commission's report to the Attorney-General of the Federation. Consequently, after the expiration of 3months from the date of submission to the Attorney -General of Federation, the Commission shall forward same Report to the National Assembly, as have been previously sent to the Attorney-General of the Federation. However, there is no time frame within which the Attorney-General of the Federation will lay the Commission's Report to the Federal Executive Council. The Commission is left with no choice but to stay and wait for 3 months before it may forward same Report to the National Assembly upon the failure of the Attorney-General submitting first to the Federal Executive Council. The duration of 3 months is a long time to wait for such important Report of the Commission that tends to address current challenges which requires urgent attention. The time frame of 3 months may not also encourage the enthusiasm of the Attorney-General of the Federation responding swiftly to the Report of the Commission. This is an issue which must be addressed if not it may result also to poor implementation of the Commission's Report which the current Act sought to address. If not addressed, it then means that Commission has to wait for 3

months before its Report is forwarded to the appropriate authority for implementation. Despite the impact of the Commission in the overall growth of the Nigerian law and the modernisation process yet it has been discovered that there is a great neglect of the impact of the commission in legislative process and as a key justice institution body. As well noted above, most attention has been shifted towards the legislature and its legislative process, while the Commission that has greatly impacted in the legislative process is relegated and thus leading to the poor implementation of the of the Commission's Report. As stated earlier, the Commission has achieved a lot, yet the Commission has been relegated and there had been poor implementation of the Commission's Report. Again, the new Act may also have failed to address the independence of the Commission. The Commissions Act makes the Commission to be largely dependent on the Attorney-General of the Federation. The Commission being under the Attorney-General of the Federation may not allow the Commission to actualise its full mandate. This issue may be addressed by placing the Commission under the Presidency to grant the Commission independence towards the full actualisation of the Commissions mandate.

5.1 **Recommendations**

This work has brought expositions to the important roles of Nigerian Law Reform Commission in legislative process as well as the urgent need for the review of the Nigerian Law Reform Commission 1979. As a result of the research findings on:

1. the Nigerian Law Reform Commissions organizational structure, its operational procedure and its function within the Nigeria executive superstructure, it is recommended that the instant Act should be reviewed by placing the Commission under the Presidency so as to grant the Commission independence towards the full actualisation of the Commissions statutory mandate.

2. the interrelationship between the work of the Nigerian Law Reform Commission and the National Assembly, the relegation of the Commission and poor implementation of the Commission's Report, it is recommended that the instant Act should be reviewed by reducing the time frame of 3 months under section 5(7)(a) to at least 2months. This reduction of time frame will prompt the Attorney-General of the Federation to send the Report of the Commission to the Federal Executive Council and the National Assembly for implementation. This will strengthen more the relationship between the work of the Commission and the National Assembly and will also solve the issue of the relegation of the Commission and poor implementation of the Commission's Report.

5.2 **Contribution to Knowledge**

This research has contributed to knowledge in the field of law reform as it relates to the legislative process. It showed that the Nigerian Law Reform Commission in its function and its work has great impact to the functions of the legislature and legislative process. The lack of the understanding of the impact of the Commission in legislative process has resulted in the general resulted in the relegation and poor implementation of its Report. This research also exposed how much the current Act needed to be reviewed and updated. As a follow up, the research has shown also how much improvement that has been made in the current Act which may enhance the functions of the Commission in legislative processes.

5.3 **Suggestions and Directions for Further Studies**

From all that have been found in this work and said in this Chapter, it is suggested that the historical development of Commission needs to be studied further; unfortunately, the writer of this research work could not trace deeply the historical origin of the Commission. Further studies need to be done to find works done on the Nigerian Law Reform Commission since inception.

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