

THE IMERATIVES OF LAW REFORM AND THE LAW MAKING PROCESS-
BEING A PRESENTATION BY WAY OF DISCUSSION BY JOSEPH
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INTRODUCTION

The concept of law reform in any modern system of government based on law is roughly captured by the preamble to the Nigerian Law reform Commission Act¹ as 'an undertaking in 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 by the Government, from time to time and for matters connected therewith'. I have highlighted the worrying aspect in my humble view, which ties law reform undertaken with taxpayers' resources to 'general directions issued by Government from time to time'. I will return to that flaw in the entire concept of law reform in Nigeria in due course. The United Kingdom set up its Law Reform Commission in 1965 as a statutory independent body created by the Law Commissions Act to keep the law under review and to recommend reform where it is needed. It is well funded and its relationship with the Attorney General's office has not hindered it from the optimum performance of its statutory function, which has been described as; 'ensuring that the law is as fair, modern, simple and as cost-effective as possible' through the conduct research and consultations in order to make systematic recommendations for consideration by Parliament, and to codify the law, eliminate anomalies, repeal obsolete and unnecessary enactments and reduce the number of separate statutes. A number of the provisions of the Nigerian legislation on Law Reform vest the Attorney General of the Federation with awesome and overbearing powers over

the activities of the law reform commission in Nigeria. The thrust of my contribution is to demonstrate that the domiciliation of law reform firmly in the Attorney General's purview within the context of the political arrangement set out for the nation by the 1999 Constitution is counter-productive and in the long run inimical to the objectives of law reform.

UNDERSTANDING THE FUNCTION OF THE LAW REFORM COMMISSION IN NIGERIA

The Commission, subject to the provisions of section 5 of the Act has the duty shall be to take and keep under review all Federal laws with a view to (a) 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.ⁱⁱ Section 5-(2) empowers the Commission in executing its function prescribed by section 5-(1) of the Act to (a) 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 (b) 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; (c) undertake, pursuant to any recommendations approved by the Attorney-General, the examination of particular branches of the law and the formulation, by means of draft legislation or otherwise, of proposals for reform therein; (d) Prepare, from time to time, at the request of the Attorney-General, 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; (e) 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. By virtue of section 5-(3) The Attorney-General may— (a) modify the terms of a reference; and (b) give directions to the Commission as to the order in which it is to deal with references.

By section 5-(6) of the Act 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. There are other provisions of the Act which specify other functions for the commission but they recognize the Attorney-General of the Federation as the sole conduit through which any legislative reform can be undertaken.

LAW REFORM AND LAW MAKING PROCESS

From the foregoing, it is indisputable that the Law Reform Commission is unduly tied to the apron strings of the executive arm of Government. The Attorney General of the Federation in effect determines which laws and areas of socio-economic life of Nigerians that get reformed through the law. One cannot blame the present dispensation i.e. the civilian democratic dispensation from 1999 till the date for the position of the law on Reform. This is because the extant legislation i.e. Act No 7 of 1979 was a Decree promulgated by the military administration of General Olusegun Obasanjo. Under military rule, the constitutional arrangement makes the Head of State both the repository of the executive and legislative powers of the Federal Republic of Nigeria. It made sense then for the head of State's Attorney General to be the harbinger of law reforms. Now, with the coming of a democratic dispensation in which the 3 arms of Government enjoy separation of well-defined powers, the powers of the AGF will appear to be

anachronistic in relation to law reform. The legislative powers of the federation under the 1999 Constitution is as follows:

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.

The business of law making for the peace, order and good government of the entire country is now vested in the National Assembly. There is an urgent need to review the existing statute on law reform so as to make or render the Commission truly independent in terms of focus and policy. Thirty years ago, this attachment to the office of the Attorney General would be normal, but in view of our movement to constitutional democracy, the Law Reform Commission must be structured in such a way that it does not exclusively mirror the wishes of the executive, rather it should be structured in a way that every stakeholder in law reform i.e. civil societies, the executive arm of Government, legislature and the judiciary are accommodated in the Commission's structure.

It may however be argued that the UK Law Commission is tied to its Ministry of Justice namely the Attorney General hence the correctness of our own arrangement. That theory or postulation will be wrong for the following reasons. Firstly, the UK operates its government with an unwritten constitution, there, Parliament is supreme. Secondly, there is also the fact that the Attorney General in the UK is a parliamentarian thus establishing the synergy between the executive and the legislature. Traditionally, the law Commission is chaired by a high judicial officer, preferably a serving or retired justice of the Supreme Court or Court of Appealⁱⁱⁱ who is appointed by the Lord Chancellor. The Commissioners are seasoned law professors in academia or distinguished learned members of the Bar. This arrangement ensures the inclusion and participation of all arms of Government and interest groups in the serious business of law reform.

THE ROLE OF ADEQUATE FUNDING IN THE OPERATION OF A VIABLE LAW COMMISSION

Funding is crucial to the activities of a law commission. Lack of funding renders such a body rudderless and a caricature of what a law

commission should be. For example, the British Columbia Law Institute in Canada was formed to replace the British Columbia Law Reform Commission, which had been disbanded due to lack of funding. In Nigeria, the funding of the Law Reform Commission is pitiful in 2012, the total allocation proposed is N376, 054, 46^{iv} out of which personnel costs i.e. salaries and wages amount to N207, 123, 929. The total goods and non-personnel costs amount to N118, 930, 582: 00. Funding was only provided for the following areas of research; (a) reform of Hire Purchase Act N4, 150, 000: 00, (b) Developing sentencing guidelines for Nigeria N5, 000, 000: 00, (c) Review of Criminal and Penal Codes N5, 000, 000: 00. These are the only 3 research areas captured in the budget proposals for 2012. I have not been able to lay my hands on the actual budget figures as appropriated by the National Assembly but the proposals show a dismal level of funding. Even the NBA has expended in the past 2 years over N100 million in the organisation of 2 Criminal Law Reform Conferences which are intervention schemes embarked upon by the Association for the reform of the criminal justice system.

RECOMMENDATION

Law reform is crucial and indispensable to a modern egalitarian society. It is so important that it ought not to be left in the hands of one arm of the government. It is time that a new legislation is put in place by the National Assembly that will reflect communality of the concept of law reform. The new legislation must ensure that the Law Commission will be truly independent. The word 'Reform' should be removed from the nomenclature of the statute. The powers of the AGF must be whittled down considerably. The funding of the Commission ought to be a first line charge on the consolidated revenue fund. The internal organisation of the Commission must be such as to demonstrate vibrancy such as exists in the Nigerian Institute of Advanced Legal Studies whose total budgetary allocation is N661, 252, 793: 00. The difference is clear in the volume and quality of reform work carried out by the 2 organisations.

CONCLUSION

From the foregoing, it is submitted that the imperativeness of law reform to the law making process is such as to galvanise the National Assembly into effecting changes to the existing legislation. I have deliberately refrained from demonstrating through its modus operandi the nexus of the law reform commission to social and economic change in the society. One of the significant achievements of the Law reform commission in Nigeria is the Corporate and Allied Matters Act, which after 21 years is due for drastic modification and alteration. The truth is that most Nigerian laws are obsolete, i.e. the criminal and penal legislations. The legislature must take more interest in the area of law reform than it is currently showing, if we are to reach the promised land of a stable democracy.

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16th July 2012

CONCLUSION

ⁱ Act No 7 of 1979 Cap 118N Laws of the Federation 2004

ⁱⁱ Section 5-(1) of the Nigerian Law Reform Commission Act

ⁱⁱⁱ The current Chair of the UK Law Commission is Lord Justice Munby appointed in the year 2009

^{iv} Facts and figures called from Budget office of the Federation