THE IMPERATIVES OF LAW REFORM IN THE LAW MAKING PROCESS

By

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Introduction

Lawmaking in any democratic country is truly and essentially the responsibility of the elected representatives of the people – the legislators. But it is interesting how over the years, the courts have sometimes, despite the restraining influence of the doctrine of judicial precedent, made radical changes in the law in order to meet the demands of society. If legislation is not forthcoming and change is sorely needed, or there is a lacuna in the law, the courts may confidently step in. Thus their contributions to lawmaking in activist judicial jurisdictions must be acknowledged.

One may readily think of the famous English case of Donoghue v Stevenson.[1] It will be recalled that before 1932 there was no general tort of negligence at common law. There were rather separate torts with separate rules. A negligent manufacturer of product was liable only to the person who bought directly from him and so had a contractual relationship with him. He was not liable to others who use the product even though he foresaw that they would use it. So the consumer of harmful ginger-beer would have no claim because it was bought for her by her boyfriend. She did not buy it from the manufacturer.

Lord Atkin in that case thought that, the time had come to lay down a general doctrine of negligence. He first observed that liability for negligence "is no doubt based upon a general public sentiment of moral wrongdoing for which

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* Hon. Commissioner, Nigerian Law Reform Commission, being paper delivered at the International Conference on Law Reform and the Law Making Process in Nigeria, organized by the National Institute for Legislative Studies at Abuja on 16th and 17th July, 2012.

1 [1932] A.C. 562.

the offender must pay."[2] He then propounded his now famous neighbour principle.

> "The rule that you are to love your neighbour becomes in law, you must not injure your neighbour ; and the lawyer's question, who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."[3]

This gave rise to the development and continued development of the tort of negligence.[4] It is a most famous example of judicial lawmaking which "worked a legal revolution."[5] Lord Atkin's biographer, Geoffrey Lewis rightly observed of this case that -

> "Atkin and his colleagues found a tangled mass of old decisions but no decision of the House directly in point. The step which they took to bring order to the chaos was one which was impelled by the ordinary needs of British society and the assumptions which it made about right and wrong. They were doing something which every legal system requires of its law makers, parliamentary or judicial, that of constantly relating the law to the tacitly accepted moral principles of their own society."[6]

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2 At p. 580.

3 Ibid.

4 See eg Hedley Byrne & Co. v Heller & Partners [1964] A.C. 465, Dorset Yatch Co. Ltd v Home Office [1970] A.C. 1004.

5 See Geoffrey Lewis, Lord Atkin, 2nd Indian Reprint 2008, p. 62

6 Lord Atkin, p. 6 See Amaechi v Independent National Electoral Commission [2008] NWLR (pt. 1080) 227; The Judiciary, Politics and Constitutional Democracy in Nigeria (1999 – 2007), by Amucheazi and Onwuasoanya, (2008) pp. 310 – 321. See Oguntade JSC, Dissenting Judgements and Judicial Law Making, 2009 NIALS (Adolphus Karibi-Whyte Graduate Lecture Series.

More recently, the House of Lords took it upon itself to abolish the marital rape exemption. As far back as 1736 it had been the law as stated by Hale[7] that a wife having given her consent at marriage to intercourse with her husband could not retract it. But in R v. R[8] both the Court of Appeal and the House of Lords held the rule no longer applicable. Lord Lane C.J. in the Court of Appeal stated: "We take the view that the time has now arrived when the law should declare that a rapist remains a rapist subject to the criminal law, irrespective of his relationship with his victim."[9] On the question whether "this is an area where the court should step aside to leave the matter to the parliamentary process," he observed that what the court had done "is not the creation of a new offence, it is the removal of a common law fiction which has become anachronistic and offensive and we consider that it is our duty having reached that conclusion to act upon it."[10]

These and other cases show what the courts can do when there is a lacuna in the law and legislation is not forthcoming, to meet the expectations of society. But it usually takes a very long time for the courts to intervene. The proposition of a general doctrine of negligence close to that of Lord Atkin was made about fifty years earlier by Brett, MR.[11] It took that long for the law to be changed. Although the marital rape exemption had existed since the time of Hale, it began to be questioned, at least widely, since the 1970's. Change came in 1991.

And whether the courts will intervene to change the law depends on whether there is appropriate litigation, and such change is confined to the issues raised in the case. The authority of the decision depends on whether the court

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7 Sir Matthew Hale, History of the Pleas of the Crown, p. 629

8 [1991] 2 All E.R. 257

9 Ibid. at pp. 265 - 266

10 Ibid. at p. 266. See "Judicial Law Making in the Criminal Courts: The Case of Marital Rape" (1991) Crim. L.R. 407. See (1992) 55 M.L.R. 386, (1992) 108 LQR. 260.

11 Heaven v Pender (1883) 11 Q.B.D. 503

which lays down a new law is the final court, and even if it is, the new law may be subject to any of the uncertainties of the doctrine of judicial precedent.[12]

In the nature of things, change by legislation is faster, wider in scope, more effective and efficient to deal with the issues involved in the change of an existing law or the introduction of a new law. These qualities are achieved if the necessary inputs in the law making process are undertaken. These include research, consultations with stakeholders, and the public where appropriate, the use of experts and consultants where necessary, call for memoranda and subjecting proposals to discussions/debates.

This is where law reform agencies come in. They are or should be an indispensable part of a good law making process. Their input ensures that legislation is based on a sure foundation, is adequate and efficient and should have wide public support.

2. Law Reform, Law Revision, Law Review, Consolidation, Codification

It is appropriate at this stage to consider the meaning of law reform and other expressions associated with changes or improvements in the law – law revision, law review, consolidation and codification.

2.1 Law Reform

Law reform usually involves a change, an improvement in the existing law to make it more suited to the changing needs of society. 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. If the impression is created that the expression "law reform" applies only to improvements in existing laws, that would be misleading. Law reform extends to the introduction of completely new legislation in a legal system.

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[12] Eg. the lower court may seek to distinguish it, may say that the facts and circumstances are not the same, that the decision was obiter etc.

According to Wikipedia,

> "Law reform or legal reform is the process of examining existing laws, and advocating and implementing changes in a legal system, usually with the aim of enhancing justice or efficiency.
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> Intimately related are law reform bodies or law commissions, which are organizations set up to facilitate law reform. Law reform bodies carry out research and recommend ways to simplify and modernize the law. Many law reform bodies are statutory corporations set up by governments, although they are usually independent from government control, providing intellectual independence to actually reflect and report on how the law should progress.
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> Law reform activities can include preparation and presentation of cases in court in order to change the common law; lobbying of government officials in order to change legislation; and research or writing that helps to establish an empirical basis for other law reform activities.
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> The four main methods in reforming law are repeal (get rid of a law), creation of new law, consolidation (change existing law) and codification."[13]

2.2 Law Revision

I find Marshall's definition of law revision quite appropriate and I adopt it. He stated:

> "The purpose of a statute law revision (in some countries described as a "reprint") 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 date, incorporating all amendments and adaptations made thereto

[13] Whttp://enwikipedia.org/wiki/Law_reform# December 2010.

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."[14]

This at once tells us what law revision is and distinguishes it from law reform.

In Nigeria, law revision is usually authorized by specific legislation,[15] is done by an ad hoc committee under a chairman of the 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 the Federation of Nigeria 2004).

Specific legislation is enacted to bring the new set of statutes into force.[16] When this is done the new set becomes the authoritative set of statutes in force.

Law revision does not involve law reform. The law revision committee usually has no authority to reform the laws. If it comes across matters needing reform, it should bring them to the attention of the appropriate authority.

2.3 Law Review

This involves an assessment of the existing laws in order to identify areas which are in need of reform or revision. It is a preliminary step to law reform and law revision. Law review may involve review articles published by learned scholars in law journals and other publications.

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[14] H.H. Marshall, "Law Reform and Law Revision in the Commonwealth" in Proceedings and Papers Of the Sixth Commonwealth Law Conference, Lagos, Nigeria. 17th – 23rd August, 1980, 191.

[15] See e.g The Revised Edition (Laws of the Federation of Nigeria) Decree (now Act) 1990, No. 21. There was none for the LFN 2004.

[16] See eg. Revised Edition (Laws of the Federation of Nigeria) Act, 2007 which authenticates the LFN 2004.

2.4 Consolidation

Over a period of 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. The act of bringing them together into one statute is called consolidation. Law revision may entail consolidation.

2.5 Codification

According to Sayers

> "Codification means different things to different people. 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 c 31 (UK) is often regarded as a prime example. But for many, codification 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."[17]

The Nigerian Criminal Code is a good example of codification. It is the reduction of the unwritten common law of crimes into a statute – the Criminal Code Act, now Cap C 38 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 a long way when it was abandoned. In England there seems to be continuing attempt to codify the criminal law.[18]

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.

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[17] Michael Sayers "Law Reform: Challenges and Opportunities", 2009 Nigerian Law Reform Journal 1 at p. 3.

[18] Ibid.

On the other hand unwritten law can develop and adapt in the hands of an activist bench.

3. Who Can Undertake Law Reform?

Law Reform can be done by the 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 measure of law reform through decisions rendered by the highest courts. By the doctrine of judicial precedent, such decisions become law and are binding on lower courts. But the scope of law reform by the courts is seriously limited, being restricted only to the facts which come before them and their decisions on those facts. The new law may not therefore be sufficiently comprehensive on the general issue of law involved. The courts may lack expertise and the ability to assess the potential effects of a change in the law. And as Sayers states "Judges are not elected by the public. [19]

The best and most widely accepted option for law reform is through a Law Reform Agency (LRA), variously called Law Reform Commission, Law Reform Committee, Law Commission, Law Review Committee. The advantages of legislating with the assistance of an LRA are many, as appears below.

4. Advantages of an LRA Input to Legislation

Input by an LRA should, ideally, be an essential part of the law making process. An LRA has many advantages which can bear enormously on the legislative process and on the quality of legislation.[20] Among these are:

4.1 Expertise

In large LRA's like the Nigerian Law Reform Commission, you have a number of persons who, over the years, have acquired expertise in different branches of the law. They keep abreast of developments in the law, can easily

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[19] Ibid at p. 5

[20] See generally Sayers supra, pp 7 – 11.

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 continued consonance with the needs of society. If there is no expertise in-house, the LRA can rely on the services of outside experts from the universities, the bench, the bar and other professionals. In the Nigerian Law Reform Commission (NLRC), and perhaps in some other LRA's, there are departments to which work falling within the area of specialty of a particular department is referred in the first instance. The recommendations from a department are considered at full meetings of the Commission and a position is taken by the Commission.

The NLRC has four departments - Business Law, Public Law, Legal Drafting and Property Law, and Private Law.

4.2 Independence

An obvious advantage of an LRA is its independence both from Government and from other establishments. This independence ensures that its recommendations are objective, in the best interest of society and not influenced by party political considerations. Section 5(7) of the Nigerian Law Reform Commission Act 1979[21] provides that the Commission "shall be autonomous in its day to day operations."

An LRA can choose its own programme of work or can work on programmes assigned to it by the Government or the legislature. But its views remain objective, reflecting very often the outcome of inputs by experts, stakeholders and the public. According to Sayers:

> "An LRA's independence enhances the credibility of its work with everyone, including politicians of all parties. It sets an LRA apart and enables it to be more vibrant, innovative and authoritative. If law reform is to be successful in modern society, it normally has far

[21] Cap. N118 LFN 2004.

better prospects of genuine widespread acceptance if it is produced independently of Government and others."[22]

An LRA's independence is, of course, not absolute. The Commissioners and officers are appointed by the Government, the Commission may be required to agree on work programmes with the Government and send annual reports to the Minister.

4.3 Continuity

Continuity is an advantage in any field of endeavour. It enhances the acquisition of experience and expertise which are immensely beneficial to the law reform process. Continuity ensures that there is a standing body of experts, a well informed and reasonably versatile body to which issues of law reform can be entrusted. Such a body will inevitably build a store of information, both hardware and software, which are relevant to law reform.

5.1 Legislative Process and Law Reform

Law reform is an indispensable element in the legislative process. This process must involve some thought as to how a proposed legislation will serve the purpose for which it is intended, how it will impact on the economy,[23] 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 obligations? etc.

Answers to many of these and other similar questions can be derived from one major source - an LRA. As we have seen, an LRA is very well equipped for this purpose because of its expertise, experience, wealth of knowledge and information in matters of law reform. An LRA exists for no other purpose than law reform. That is its focus.[24] The relevance and usefulness of an LRA in the law

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[22] Ibid., at p. 7

[23] See O.A. Osunbor, "Law Reform as a Tool for Economic and Social Development" 2010 Nigerian Law Reform Journal 35.

[24] Sayers mentions focus as one of the advantages of an LRA, ibid., at p. 10.

making process is widely acknowledged throughout the Commonwealth and in other parts of the world. Over two-thirds of commonwealth countries have LRA's established by law. The Law Commission in England was set up as far back as 1965, the Australian Law Reform Commission was set up in 1973, and Tasmanian Law Reform Commission in 1974. The Nigerian Law Reform Commission was established in 1979.

A typical provision setting out the functions of an LRA in many commonwealth countries is section 5(1) of the Nigerian Law Reform Commission Act. It provides that:

> "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 modernization of the law."

By Section 5(2) of the Act, the Commission shall receive and discuss law reform proposals referred to it by the Attorney-General, and it may, on its own initiative prepare and submit law reform proposals to him. It may, at the request of the Attorney-General undertake programmes of consolidation and statute revision. It may also, at the instance of the Federal Government provide advice and information to Federal Government Departments and other bodies, on proposals for the reform or amendment of any branch of the law.

By section 7, the Commission is empowered to consider proposals for reform of State laws from any state, group of states or all the states in the Federation and submit reports thereon to the Attorney-General or Attorneys-General of the state/states. The Commission may also, on its own, put forward proposals for the reform of state laws to the appropriate state Attorney-General.

It can be seen from this, that the Commission has enormous statutory duties with respect to Nigerian laws. It acts as a custodian of the laws – to reform them, keep them current, remove obsolete laws, simplify existing laws, modernize them, revise and codify them when necessary. All of these involve the legislative process. Change and improvement cannot be effected 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.

The NLRC contributes this input in at least two major ways. The first is through the quality of its internally generated reform proposals. The second is through its interaction with the National Assembly, Ministries, Departments and Agencies.

5.2 Quality of Reform Proposals

A major characteristic of the NLRC's law reform proposals is that they are usually characterized by inputs from experts, stakeholders and the public. This in effect ensures adequacy, thoroughness and wide acceptability. It provides in a profound way inputs which are of very high quality and very helpful to the legislature in dealing with legislation. The characteristics of inputs into the NLRC's law reform proposals may be illustrated with two recent projects handled by it between 2007 and 2011.

5.3 Reform of the Companies and Allied Matters Act 1990 (CAMA)

The first illustrative project involves the reform of the CAMA 1990.[25] This is a very well crafted legislation produced by the NLRC in 1988/89. However, after over sixteen years some of its provisions were found to require modernization so as to meet the expectations of companies, regulators and the investing public.

[25] Cap. C 20 LFN 2004

Basic work on the project was done by the Business Law Department which prepared a Discussion Paper on the subject. Full meetings of the Commission were held several times to deliberate on the reform proposals in the Discussion Paper and to take positions on the various issues raised. Thereafter, a Working Paper was prepared for a Workshop.

It is important to mention here that in keeping with the usual practice of the Commission, it sought wide public participation in the Project.

> "Apart from very wide consultations embarked upon by members of the Commission, the Commission invited the views of all interested organizations, institutions, academia, individuals and stakeholders, who may wish to suggest proposals for the review of the CAMA. This was done through advertisements in two Dailies. Certain stakeholders, individuals and institutions were written directly, requesting them to send their memoranda."[26]

The Workshop was held on the 6th and 7th of November 2007. The opening ceremony featured an array of many eminent stakeholders at the highest level. The Guest of Honour was the Chief Justice of Nigeria (represented by a Supreme Court Judge). Others include Judges of the Federal High Court, High Court of the F.C.T., representatives of the Minister of Commerce and Industry, Chairman, Senate Committee on Judiciary, Human Rights and Legal Matters, the Director-General, Nigerian Institute of Advanced Legal Studies, Executive Secretary of the National Human Rights Commission, the Director-General, Nigerian Law School, the Secretary to the Council of Legal Education, the Registrar of the Corporate Affairs Commission, the Director of Research, Nigerian Institute of Advanced Legal Studies.

There were also a number of representatives of some relevant federal government parastatals, such as the Securities and Exchange Commission (SEC), the Corporate Affairs Commission CAC, National Human Rights Commission, and the Federal Inland Revenue Service. Various Chambers of Commerce e.g., Lagos

[26] Report on the Review of the Companies and Allied Matters Act, Cap. C 20 Laws of the Federation of Nigeria 2004 (CAMA) p. 3, para. 9

and Kaduna, accounting bodies – Institute of Chartered Accountants of Nigeria (ICAN), Association of National Accountants of Nigeria (ANAN), Banks, the Nigerian Stock Exchange and some non-governmental organizations were present.[27] Nearly all of them participated in the discussions that followed.

I have set out the attendance in some detail so as to highlight the importance attached to review of the CAMA by very eminent stakeholders. Even so, the actual participation and contributions of very high profile stakeholders is quite remarkable. Various vital issues were properly debated and discussed by stakeholders - the SEC, the CAC, stockbrokers, legal practitioners, law teachers, accounting bodies etc. In keeping with democratic rules, majority views were mostly adopted.

Some of the more important recommendations relate to the disqualification of directors for criminal offences,[28] establishment of a register of disqualification orders by the CAC,[29] striking off of a company's name for non-filing of returns for a specified period,[30] limitation of directorship of public companies by an individual to five,[31] removal of the secretary of a public company,[32] unclaimed dividends,[33] audit committee,[34] fees, fines and penalties,[35] minimum capital for public and private companies,[36] etc.

After the Workshop, the Commission found it necessary to have some grey areas deliberated upon further. This was done at a Round Table discussion held on October 6, 2009.

The Commission's Report on the Review of the CAMA which included a Draft Bill was submitted to the Honourable Attorney-General and Minister of Justice in May 2010.

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[27] See Report on the Review of CAMA, p. 6.
[28] Ibid. pp. 30, 31, paras. 16, 18.
[29] Ibid. p. 32, para. 23.
[30] Ibid. p. 34, para. 33.
[31] Ibid. p. 36, para. 38.
[32] Ibid. p. 40, para. 62.
[33] Ibid. p. 42, para. 70.
[34] Ibid. p. 45, para. 80.
[35] Ibid. p. 50, para. 100.
[36] Ibid. p. 52, para. 109

5.4 Amendment of the Criminal Justice (Release from Custody) (Special Provisions) Act, Cap. C 40 LFN 2004.

The second illustrative project is the amendment of the above legislation. A few years back there was heightened concern about the ever increasing congestion in Nigerian prisons. One or two Governors even indicated that they would begin signing execution warrants to aid prison decongestion. The NLRC came up with the idea that an amendment of the Criminal Justice (Release from Custody) (Special Provisions) Act would assist prison decongestion.

The Act has two sections only. The proposal for amendment relates to section 1(I)(b). It provides that if the Chief Justice of Nigeria or the Chief Judge of a State is satisfied that a person has been in detention awaiting trial

> "for a period longer than the maximum period of imprisonment which the person detained could have served had he been convicted of the offence in respect of which he was detained, the Chief Justice or the Chief Judge may issue an order of release to the person in charge of the prison and such officer shall on receipt of the order release the person named therein."

Considering that about 70 percent of the prison population in Nigeria consists of persons in detention awaiting trial, the NLRC thought that some solution may lie in amending section 1(I)(b) to provide for release from custody if the detainee has been in custody for a period equivalent to one-third of the term of imprisonment prescribed for the offence. The reasons for this recommendation are that:

(a) maximum sentences are very rarely imposed;
(b) awaiting trial detainees suffer more intense hardship than convicted detainees;
(c) overstaying, which seems inevitable sometimes, amounts to

compensable unlawful detention;[37]

(d) detainees are presumed innocent until proved guilty;[38]

(e) possibility that the detainees may be found not guilty;

(f) detainees, even if convicted, might have benefitted from remission of sentence.[39]

The Commission's proposal was taken to a National Workshop on "Sentencing and Prison Decongestion Reform" which was held on October 12, 2010. Again, as usual, the Workshop was attended by very eminent participants and stakeholders. They included, judges, eminent legal practitioners including Senior Advocates of Nigeria, prison officers, representatives of non-governmental organizations, members of the public and other stakeholders.

The Commission's recommendations were fully discussed, votes were taken and the outcome is as follows:

Period of Detention	Action to take	No. in Favour
½ of Maximum Term	Discharge and Acquit	20%
1/3 of Maximum Term	Release on Bail	14 %
1/3 of Maximum Term	Discharge and Acquit	63%
½ of Maximum Term	Release on Bail	0%
2 Years in Detention	Discharge and Acquit	0%
2 Years in Detention	Bail	3%
Leave the Law as it is	-	0%

It will be seen that an overwhelming majority, 63 per cent of participants, supported the view that a person in detention awaiting trial should be released, without any further charge on the same matter, if he has stayed in custody for one-third of the term of imprisonment prescribed for the offence. This recommendation was forwarded to the Honourable Attorney-General and Minister of Justice in February 2011 for further action.

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[37] Constitution of the Federal Republic of Nigeria, 1999 Cap. C 23, LFN 2004, s. 35(6).

[38] Ibid. s. 36(5).

[39] See Regulations 54 and 55 of the Prisons Regulations, Cap. P29, LFN 2004.

I have set out these two examples in full to illustrate the way the Commission works, the public participatory nature, the amount, quality and expertise of inputs which go into its recommendations for law reform. In my opinion these present a very solid and sure foundation for the draft bills which may ultimately be presented to the National Assembly for legislation and makes its work easier. In addition, of course, it gives hope of legislation which is modern, adequate and capable of meeting the needs of society. I may add that the Commission has its own legal draftsmen and this ensures qualitative draft bills.

6. Cooperation between the Nigerian Law Reform Commission, the National Assembly, Ministries, Departments and Agencies.

An enormous amount of cooperation exists between the National Assembly and the NLRC. From time to time committees of both the Senate and the House of Representatives send draft bills to the Commission for comments. These are circulated to be read by all research staff and commissioners. Discussions are held at subsequent meetings of the Commission. Thereafter, the Commission's comments are forwarded to the appropriate committee of the legislature.

These comments are usually incisive and well researched. They may relate to aspects of the substance of the Bill, constitutional issues, possible conflict with existing legislations, propriety of prescribed penalties, drafting style etc. These are aimed at improving the quality of the Bill.

In a few cases the Commission may consider a Bill unnecessary and will advise accordingly stating its reasons.

In addition to this, the Commission is usually invited to public hearings at the National Assembly on Bills previously referred to the Commission and on some other important Bills. Two staff of the Commission, a Commissioner and a

senior law research officer are assigned, on a permanent basis, to attend these hearings. Reports indicate that their contributions are often very helpful and well appreciated. A senior research officer in the Commission acts as liaison between the National Assembly and the Commission.

Occasionally, the NLRC makes direct inputs to proposed legislation by Ministries, Departments and Agencies. Such proposed legislation are sometimes referred to the NLRC by MDAs for recommendations, inputs and oversight generally.

7. Improvements

There can be no doubt that there is room for improvement in law reform inputs to the legislative process. These can come mainly by improving the work tools of an LRA and stimulating interest by adequate implementation of its work. The following are some of the areas where improvement is usually required.

7.1 Funding

Observations show that many LRA's are underfunded. This hampers their work and affects productivity and the quality of work produced. Adequate funding is necessary for a good, up-to-date library which is very essential to the work of an LRA. It will enable an LRA pay the fees of consultants, experts, and pay for the expenses of conducting research, workshops etc. During its very hurried relocation from Lagos to Abuja, the Commission lost many of its books and many others were badly damaged. Many of the library bookshelves were also destroyed. These have not been replaced. Consequently, special funding is needed to re-equip the library and bring it up to date. Without a good library the work of the Commission is impaired.

7.2 Staff Recruitment

Legal staff of LRA's should be highly competent and brilliant persons, hardworking and research oriented. The office is not one for political patronage. Because of the nature of the work, staff should be recruited on merit, otherwise

incompetent staff will create a burden on competent ones. In Nigeria, merit should override the federal character principle in the recruitment of research staff.

7.3 Implementation of Reform Proposals

Among recent Reports (with Draft Bills) of the Commission which are awaiting implementation are the following:

1. Report on Consumer Protection Laws (2007).
2. Report on Family Law (2007).
3. Report on the Companies and Allied Matters Act 1990 (2010).
4. Review of the Nigerian Investment Promotion Commission Act, 2004 (2010).
5. Report on the Laws Relating to Rape and Other Sexual Offences (2010).
6. Amendment of the Criminal Justice (Release from Custody)(Special Provisions) Act 2004 (2011).

Some of the Commission's earlier reports are still awaiting implementation, for instance, the Report and Draft Bill on Prisons (1993). I am surprised to see from the files that a Report and Draft Bill on Sentencing was submitted to the Attorney-General in December 1981 which has not been implemented. Yet the Commission is presently working afresh on Guidelines for Sentencing. In 1989, the then Attorney-General set up a National Committee on Unification and Reform of the Criminal Laws and Procedure Codes of Nigeria under Justice Karibi-Whyte. The Report of that Committee on a unified penal code has not been implemented. There have been calls for a unified penal code and the NLRC is presently working on one.

Low implementation rate of reform proposals is a feature confronting many LRA's.[40] In Nigeria the Commission is by law bound to send its Report (including a

[40] See Sayers, at p. 14 "A common problem is great delay in obtaining a clear Government response."

Draft Bill) to the Attorney-General. The Commission has no hands in what happens thereafter. The low implementation rate of the Commission's Reports is quite worrisome not only to the Commission but also to some stakeholders who inquire about the fate of proposed legislation. It will help the legislative process if there is improvement in the sphere of implementation. This observation by Lord Irvine of Lairg QC in respect of the Law Commissions of England and Scotland is illuminating;

> "The importance and momentum of law reform must be restored by enhancing the status of the Commissions and putting in place arrangements for the implementation of the Commissions' proposals ... No government can, of course, be bound by the proposals of the Commissions, or undertake always to implement them; but where government disagrees with these independent bodies, democracy demands that the reasons for that disagreement be stated openly; and be subject to public and Parliamentary scrutiny. To put law reform back with a high place on the political agenda, basic changes as a matter of urgency are essential."[41]

A former highly experienced Director in the NLRC[42] had observed that –

> "The Attorney-General is statutorily bound to submit Commission's Report to the appropriate legislative authority for enactment.[43] But experience has shown that this is not always the case. Non-implementation of our Reports is one of the major challenges facing

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41 Law Reform for All, David Bean (ed) p. 28, Blackstone Press Ltd.

42 W.O. Anaekwe, in a paper titled "Research Methodology and Law Reform Process" (at p.4) presented at a Training Course for Legal Officers of the Ondo State Law Commission in Abuja, 29 November to 2nd December 2004. In Australia "Section 37 of the Law Reform Commission Act requires the Attorney, within fifteen sitting days of receipt of a report from the Commission, to lay that report before both Houses of the Parliament. This section explicitly recognizes that it is the function of the Parliament to call it to account, but also to consider, and, if appropriate, ultimately to implement the recommendations of the Commission," See Reforming the Law, Report by the Senate Standing Committee on Constitutional and Legal Affairs on Processing Law Reform Proposals in Australia (1979) p. 9.

43 Citing s. 5(6) NLRC Act

> the Commission ... We recommend an amendment of the Act to compel the Attorney-General to lay the Commission's Report before the Federal Executive Council and the Legislative Assembly before the expiration of 30 days after receipt. This is similar to the Victorian Law Reform Commission Act 1984 which requires the Attorney – General to lay the Commission's Report to the Executive Council and the Legislative Assembly before the expiration of 14 days after receipt."

The same writer has commented on some factors militating against implementation. She highlights in particular, "loopholes in the founding statute" and states that although the Attorney-General is bound to lay the Commission's Report before the appropriate authority,

> "..... the Act (The NLRC Act) does not specify any time limit within which he must do so, or what will happen it he does not do so at all. It merely assumes that he will act on the Report in a timely manner. This is a serious loophole in the Act. Experiences of the Commission and indeed some other law reform bodies have shown that absence of a time-limit provision conduces to delayed tabling of the Report by the Attorney-General, and which in turn results in delayed or non-implementation of law reform proposals."[44]

The present Commission is considering some amendment to its enabling Act which will, inter alia, authorize it to forward its Report and Draft Bills to the National Assembly if no action is taken on them after a reasonable time. The duty to modernize the law and keep it up to date cannot be met unless implementation is reasonably timeous, in appropriate cases at least. Some fines in the CAMA are as low as N10, N25 and N50.[45] And the fee for inspection of a

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[44] "Implementation of Law Reform Proposals: The Nigerian Experience" 1996 Nigerian Law Reform Journal (NLRJ) 1 at p.4. Other militating factors mentioned by the writer are the Interest or enthusiasm (or lack of it) of the Attorney-General in law reform matters, and the absence of infrastructure or machinery in the legislature for passing law reform proposals, at pp. 6 – 12.

[45] See eg. ss. 83(4), 85(4) and 87(3) CAMA.

company's register by a non-member is "N1 or any less sum as the company may prescribe for each inspection."[46] Such provisions require urgent amendment as has been recommended by the Commission.

8. Commonwealth Association of Law Reform Agencies (CALRAS)

It may be useful to say something about the Commonwealth Association of Law Reform Agencies (CALRAS). This Association was formed "to foster and encourage international cooperation on Law reform."[47] Membership is open to Law Reform Agencies in the Commonwealth. The NLRC is a member. Meetings are held bi-annually, usually a couple of days before the Commonwealth Law Conference and in the same venue. They provide opportunity for the discussion of law reform issues. Papers are presented and discussed, ideas are exchanged on important issues of law reform.

Michael Sayers, General Secretary of CALRAS has observed that "Over the years, some LRAs have assisted other LRAs from time to time, especially through bilateral exchange of information and views. However, cross-fertilisation between LRAs is not always easy; they are busy, varied and often geographically distant"[48]

There are also Commonwealth regional law reform conferences which enable LRAs in a region to meet and discuss law reform issues and exchange ideas on common problems and the way forward. The NLRC has benefitted immensely from these conferences.

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[46] S. 87(1) CAMA.

[47] Michael Sayers, The Commonwealth Association of Law Reform Agencies (CALRAS). Newsletter, March 2009, The Commonwealth At 60 p.1

[48] Ibid.,

9. Conclusion

I have attempted to demonstrate the importance and usefulness of law reform to the legislative process. Our laws must be adequate, modern and able to meet the social and developmental needs of society. Laws must keep abreast of the reform needs of society and no one is better suited to ensure this than an LRA because of its focus, experience and expertise in that regard. Furthermore, it is by statute charged with that duty. The courts can very occasionally assist in the law reform process, but the primary responsibility remains that of the LRA and the legislature. An LRA cannot undertake all the law reform work in a country. That is neither possible nor advisable. The legislature itself does an enormous amount of law reform work through private members' bills in addition to executive bills.

Our National Assembly is to be much commended for its activism in law reform and for a good number of recent and innovative Laws which it has passed. The judiciary has also demonstrated activism on the issue of locus standi[49] and state impunity,[50] to take a few examples but in some cases like Amaechi v Independent National Electoral Commission,[51] this has tended to raise more problems than it sought to solve. This underscores the imperatives of law reform through the legislature which ideally is best suited to perform the function of law-making in a democratic society.

Thank you.

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[49] Adesanya v President of Nigeria (1981 5 S.C. 112.

[50] Military Governor of Lagos State v Chief Ojukwu [1986] 1 NWLR (pt. 18) 621.

[51] The Supreme Court held that it is the political party and not the candidate that wins a governorship electioin. This appears to be in conflict with s. 177 of the Constitution which envisages that a candidate must possess prescribed qualification to stand for election on the platform of a political party. A correct reading of the Constitution is that both the candidate and his political party jointly win or loose an election. One of them standing alone cannot win.