

AN EXTENSIVE APPRAISAL OF LAW REFORM IN NIGERIA

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BACKGROUND INTRODUCTION

An egalitarian society is where everybody is treated equally, regardless of status or wealth. For such a society to exist, people must live within the confines of the law. This also means that the law, at all times, must be configured to meet the changing realities of societal needs. The processes by which laws are made and enforced are the foundation of a society under the rule of law.ⁱ

To live in society, man has had to fashion out some rules of conduct and some laws to govern the conduct of the members of that society. This is to prevent chaos, conflicts and confusion that would have resulted from the absence of such rules and regulations guiding man's behaviour. It is this need for harmonious co-existence among men that makes law an imperative for human existence. The society is not static; it is organic, and so is law. And as society grows, so does law. Therefore, a growing society will need a growing and dynamic system of laws to regulate its social intercourse and interactions.

Law is indispensable in ensuring the application of the core values of any nation. Law changes with society. Law grows and dies with society because it is the law that keeps a society intact, while the relevance of law is predicated upon meeting the yearnings and aspirations of the society. The challenges of societal growth, demands and dynamisms are tackled through the instrumentality of the law. In fact, law does not only change with societal changes, but actually initiates the changes in society. Hence, law's indispensable role as a veritable tool for social engineering.ⁱⁱ

BRIEF HISTORICAL BACKGROUND

The history of Nigerian legal system is interwoven with that of the colonial British administration. In fact, Nigeria is a creation of the British colonial administration. Prior to the present entity called Nigeria, what existed, as credited to Sir Hugh Clifford, (a former Governor General of Nigeria) was “a...collection of independent native states, separated from one another ...by great distances, by differences of history and traditions and by ethnological, racial, tribal, political, social and religious barriers”. But with the advent of British colonialism in that geographic space of indigenous, autonomous communities with different socio-cultural and Political identities, there was the need for some sort of 'fusion' of these diverse and divergent entities for administrative convenience to facilitate the economic exploitation of these areas by Britain. Naturally, the most veritable way to achieve this economic goal was through the instrumentality of the law.

The dominant legacy that the British bequeathed to Nigeria was her colonial legal heritage. It was such that between 1862, when the colonialists made their first set of laws, up to Nigeria's independence in 1960, the British colonial system had taken very firm root in Nigeria. This was expectedly so because of the general policy of the British colonial administration, which was to adopt the United Kingdom as a model. So, it was that at independence, Nigeria had as part of the sources of her laws, the Common law of England, the doctrines of Equity, as well as the Statutes of General Application in force in England as at 1st January, 1900. These were in addition to our local legislations (both at federal and regional levels), Case law, as well as Islamic law, and Customary laws that are not repugnant to public policy, natural justice, equity and good conscience. In other words, if our Local laws, Islamic and Customary laws differ from the received English law they were and I dare say are still deemed inoperative due to the repugnancy principles.

The Application of the received English laws also brought with it the need for personnel to administer and enforce such laws. Hence, the introduction of the English Courts, Judges, legal practitioners, court staff, Police, Prisons and other relevant personnel for the smooth administration of justice. In fact, the origin of the legal profession in Nigeria dates back to 1862, with the introduction of the British patterned courts by the colonial administration. The

introduction of the Courts brought about the need for an organized legal profession that will apply English laws and precedents. Between 1864 and 1865, about five (5) Ordinances which related to the legal profession and administration of justice were made for the settlement of Lagos. Since then to this day, that colonial history still wields an abiding and compelling influence on every aspect of our legal system!

As our laws presently are, not a few acknowledge the fact that our legal system is still bogged down under the weight of alien colonial vestiges and bequests in the form of enactments and institutions. Some writers are of the view that under British Colonialism, law was an instrument of legal control, legal manipulation and legal punishment of those who challenged the colonial system, and that was why notable Nigerians were sent to jail as "trouble makers" within the period in question. For this reason, they argue that all inherited laws must be jettisoned for totally new home-made laws. While I agree that most of these laws have outlived their usefulness in view of the fact that we are an independent nation under democracy, I do not subscribe to the idea of totally throwing all our present laws overboard for the reason of their colonial heritage alone.

The fact is that some of these inherited laws have stood the test of time, and are still relevant to our society. No nation lives in isolation. The world is fast becoming a global village. We can still keep some of the laws, adjust some to meet with current realities, but fine tune them to fit within our local situation. We should not throw away the baby with the bathwater in our bid to reject everything Western. What we need is a comprehensive 'surgical operation' on our laws, so as to excise the archaic, obsolete and redundant legal provisions and infuse or inject legal provisions that will adequately satisfy the present needs, yearnings and aspirations of our people.

The need for this reform is informed from the background that the inherited laws that regulate criminal, civil and commercial activities in Nigeria are still basically the same, with minor changes since their initial introduction. Meanwhile the colonialists that bequeathed us with these laws are now 'light years ahead' of us with current laws that meet the prevailing social, political and economic situation of their people. What we need to do as a nation in order to effectively promote good governance and welfare of all, on the principles of freedom, equality

and justice? The answer, among others, lies in law reform. This is because the key to building a successful democratic state and an efficient economy lies in the adherence to the rule of law. And the rule of law can only be enhanced both by adherence to its principles and through dynamic changes in our laws to reflect the mood of the times.

DEFINITION OF LAW REFORM

Law reform is the process of examining existing laws and advocating and implementing changes in the legal system usually with the aim of enhancing efficiency and justice delivery. Legal reform can be the driver for all other reforms, including reform of the economy.ⁱⁱⁱ

Law reform is the process by which the law is modified and shaped over time to better reflect the social values that society feels are important. The law cannot stand still. A major function of the legal system is to respond to changing values and concerns within society, resolve issues as they develop, overcome problems that occur in legal cases or events, promote equality and respond to scientific or technological developments. Law reform is essential if the law is to remain relevant to a changing society.^{iv}

Law reform usually takes the form, of Repeals, creation of new laws, consolidation, amendment and codification. Repeal is the removal by statute law of obsolete and unnecessary statutory provisions. Codification is the process of collecting and restating of the laws of a jurisdiction in certain areas usually by subject matter forming a legal code. It is also the process of preparing and enacting one title at a time, a revision and restatement of general and permanent laws. Codification is a true law-making process because it provides for study, research, consultation and planning which are essential to orderly development.^v Consolidation is the bringing together of provisions scattered among many statutes.^{vi}

Suggestions for new reform projects may come from different sources in different jurisdictions, apart from the law reform agency and the government. For example, the courts, the legal profession, academics, and professional associations may from time to time comment, with varying degrees of vigour, that particular areas of law merit review by the law reform agency.

THE CONDITIONS WHICH GIVE RISE TO THE NEED FOR REFORM

1) Changing Social Values

The values of societies change over time. This places pressure on the law to change and adapt over time. What is acceptable at one time may be considered unacceptable at another time. Similarly, the push for tougher sentencing in law reform may satisfy the retributive aspects of punishment but harsher penalties are not statistically shown to reduce crime rates. Thus, in seeking to promote social values for tougher penalties it undermines our social value for fairness and the concept of justice for the individual.

2) Changing Composition of Society

The country is culturally diverse and socially progressive. Australians are, on the whole, tolerant and open. However, with the recent rise in global terrorism suspicions and fears have risen.

Politicians have subtly manipulated the media to suggest certain types of people and religions are propagating terrorism, when in fact no religion preaches violence as a way of life. The fears have led to the passing of new Commonwealth laws on terrorism that undermine the democratic values that have been the foundation of our democracy. Thus, in seeking to preserve social values, some aspects of the values held dear have been lost.

3) New Concepts of Justice

As social values change, so too does our concept of justice. Drug law reform in SA and the ACT, have placed pressure on other jurisdictions to reform law relating to the possession and personal use of small quantities of 'soft' drugs. Sentencing laws are continually subject to law reform scrutiny. Areas where sentencing is currently under review in NSW relate to Indigenous offenders and corporate offences. Similarly, at the Federal level the use of periodic detention as a punishment has been questioned because of the difficulties in administering it.

4) Failure of Existing Law

When laws fail then they must be reformed, or revised by amendment. Occasionally, the government is discussing the law reform when it is forced by an incident. There was much

debate on firearms controls when the Port Arthur massacre, initiated by Martin Bryant, took place. This hastened gun control in Australia.

5) *International Law*

When International law is reformed this can lead to changes within Australia's domestic legal regime. This is particularly true when having signed a Convention at the UN. Australia passes new domestic legislation.

6) *New Technology*

New technologies create the need for law reform. When technology is in advance of the law then it passes pressure on the law to reform. For example, new mobile phone technology which allows for the taking of pictures which can be transmitted by SMS has led to calls for reform to privacy laws. New technology has also allowed for DNA testing which can assist in solving crimes. The use of such technologies can lead to criminal law reform.

PROCEDURE FOR LAW REFORM

A typical law reform process will involve the following procedures;

- a) Starting the law reform process
- b) Working out the issues and problems and involving the community
- c) Consultation papers
- d) Getting Input and ideas from the community
- e) Reporting recommendations

a) *Starting the Law Reform Process*

The Attorney General or the head of particular jurisdictions ministry of Justice written the law reforms Commission/Committees/Agency asking it to inquire into, and report on the need for reform of the law on a particular topic. This written request is known as the Terms of Reference. References are given or may be given for various reasons among which are governments concerned about the Subject matter repeals events or legal cases have highlighted a problem with the law or scientific or technological development have made it necessary to overhaul the law or think about creating new laws.

The law reform body still reserves the capacity to suggest any topic to the Attorney General or Head of ministry of justice based on its research or inputs from the public or civil organizations. Furthermore, on this phase of the Procedure the head Commissioner or chairperson appoints Commissioners to take responsibility for the reference and the secretary allocates research staff. On some Occasions the reform body engages consultants i.e. lawyers and other experts to assist with reference, the group of Commissioners handling a particular reference is called a division.^{vii}

b) Working out the Issues

A research and publication plan are prepared setting out the time and duration for the reviews and methods for public consultations. Division and research staff will undertake some preliminary research into the reference and publicize in the polity that the review is taking place. Preliminary consultations will be carried out. This will include; consulting people and organizations with interest in the reference, publishing the enquiry in the media and identifying defects in the law and existing proposals for reform, and finding relevant laws overseas and making comparative analysis.^{viii}

c) Consultation Papers

The law reform body prepares one or more consultation papers^{ix} or a research report^x about the reference explaining all the issues and suggestions for reform. The public is invited to write submissions to the commission or agency. Issuing publications is a major way or method of involving the public in the law reform process. These papers discuss the issues and options for reform and seek comments on proposals for change. The commission publicizes the release of consultation papers or research reports in the media and other means^{xi} of publication to enable the public make comments and contributions.

d) Getting input From the Public

Contributions to references are known as submissions¹² which contain comments on matters raised in an issue or discussion paper. Or can discuss other matters relevant to the topic under review. In conducting public consultations law commissions have in recent years used the following methods:

- i. Public meetings
- ii. Public opinion surveys
- iii. Participatory talk-back radio interviews.

e) Reporting Recommendations

After a completion of its research and public consultations the commission /agency releases a report that contains the commission's recommendations for reform, explaining the commission's reasons for making them. Where appropriate a report contains draft legislation, which may be adopted wholly or in part by government where the recommendations are accepted. On receipt of the recommendation the Attorney General tables the report before the legislature or parliament as the case may be.

SOURCES OF LAW REFORM

A major function of Parliament is to introduce new legislation or amend existing statutes. Besides law reform commissions, there are many other organizations which put forward proposals for law reform.

a) Government Policies

Every government Minister has the job of introducing legislation about matters that fall within his or her portfolio. Members have responsibility for implementing their party's political platform. This type of legislation is generally prepared by the relevant government department. Policies, party platform and election promise Political party leaders, ministers, their advisers and staff Public service Council of Australian Governments and Ministerial Councils.^{xii}

b) Parliamentary committees

Every parliament has several committees where members of parliament from all parties investigate matters and make suggestions for changes to the law. A report that has support from all sides of politics will often be implemented readily as exemplified in the Constitution of the federal republic of Nigeria (Third Alteration) Act 2010. Any member of parliament is entitled to introduce a private member's bill.

c) *Ad hoc Committees*

A Minister can appoint an ad hoc committee of experts to investigate a particular matter and advice on how the law in that area should be reformed. Such committees use many of the techniques of a law reform commission to consult with the community on what the law should be, but have only a limited responsibility. Royal Commissions often recommend reform of the law in their reports.

d) *Permanent Advisory Bodies*

There are a number of bodies established by governments which have an ongoing responsibility to monitor the operation of, and propose reform to the law in, a particular area. In the federal sphere these include the law reform commission, the human rights commission, and In Lagos state the newly constituted law reform committee.

e) *Independent Authorities*

Some independent bodies have the responsibility of investigating the activities of private citizens and government officials which can also advise the Government about law reform.

f) *Professional Associations*

The Nigerian bar association and other professional bodies could test the limit of an existing law and or push for reforms through those mediums. These professional associations regularly suggest amendments to the laws in a particular jurisdiction, both in relation to their profession and generally.

g) *Judicial Decisions*

Judicial decisions are an important source of law reform. This is especially so for Nigerian labour law since 1981^{xiii} Judges who engage in judicial activism more often than not point the way towards law reform. Judicial decisions here include the judgments of courts of record and those of the specialist labour court the National Industrial Court.

THE NIGERIAN LAW REFORM COMMISSION

The Nigerian Law Reform Commission was established in July 1979 by the Nigerian Law Reform Commission Act Cap 118 Laws of the Federation of Nigeria 2004.^{xiv}

Purpose

The Act in its long title states that the Law Reform Commission for Nigeria is setup to 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 by the government, from time to time and for matters connected therewith.

Officers

The four Commissioners of the commission are appointed by the president and must be persons who to the National assembly are qualified by being a high judicial officer, an eminent academic or a legal practitioner of not less than 12 years post-call^{xv} with a renewable tenure of five years. Their appointment is terminable by the national assembly on grounds of misbehaviour or inability to discharge the duties of his office by reason of physical or mental incapacity.^{xvi}

Functions

The functions of the Commission are as set out in Section 5 of the enabling Act thus:

- (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 modernization of the law.

These functions are typical of the functions of an independent LRA, elegantly couched to enable the commission be better placed to perform its duties. However, the ensuring sections are not exactly what they should be. Subsection 2 (a-e) gives in detail how these functions are to be performed. In summary it provides that the commission shall receive and consider proposals from the Attorney General of the Federation, the Commission can on its own initiative to be approved by the Attorney General prepare programmes on law reform. On the recommendations of the Attorney General examine particular branches of the law and formulate proposals for reform, and furthermore in (2) (d) at the request of the Attorney General once again prepare comprehensive programmes for consolidation and statute law revision, may provide advice and information at the instance of the federal government to federal government authorities or bodies with proposals for reform.

TYPES OF LAW REFORM

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 statutory law reform; administrative law reform and 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. They walk in tune with each other.

a) Statutory Law Reform

Under statutory law reform, we have repeals, which is the process of weeding out obsolete, dysfunctional and irrelevant elements in legislation. There is also codification which is the process of collating and restating of the laws in certain matters, usually by subject matter forming a legal code. Codification provides for study, research, consultation and planning which are essential to orderly development. Consolidation is the process of bringing together provisions scattered among many statutes.

The Nigerian Law Reform Commission is the body responsible for the reforms of our laws. This does not preclude stakeholders from the Judiciary, the legal profession, Civil Society Organizations, and others such as Universities from making meaningful inputs into the process of law reform, which requires very wide consultations.

b) Administrative Law Reform

Legal reform has to have administrative law reform component, like subordinate legislations in the form of Rules, Orders, Regulations and Instructions from Ministries and Government Departments. This aspect of legal reform is very necessary, so as not to impede the effective implementation of the Statutory laws. More often than not, most constraints to efficient decision making come from challenges experienced in this area rather than statutory law. For example, no matter how well laid out our laws are, if those saddled with the responsibility for investigation, prosecution and adjudication do not follow policy framework or clear-cut guidelines and instructions that would enhance efficient and purposeful investigation and prosecution, it will negatively affect the outcome of the whole justice administration.

c) Judicial Law Reform

The third element of law reform is what we know as judicial reform. This has to do with making the requisite laws, rules, practice direction and regulations that are most suitable for the judiciary's effective administration of justice. Within judicial reform, one can detect, at least four strands of reforms. There is the need for the requisite strength in terms of qualified judicial officers for faster dispensation of justice. The constant delays that litigants experience in trial of cases, resulting from overloaded dockets, has made the Amnesty International to describe the Nigerian Justice system as “conveyor belt for injustice from beginning to the end”. Although I do not subscribe to that uncharitable comment about our justice system, I must confess however that there is still the need to improve on our justice delivery. This strand of judicial reform also has to do with the process of appointment and promoting of judicial and non-judicial officers. There is also another aspect of judicial reform linked to improving judicial efficiency and court productivity, through education/training, better court administration in non-judicial functions and improved case and case-flow management, with infrastructural developments. The third sub strand of judicial reform has to do with reform in

Information and Communication Technology (ICT). This aspect can tremendously be used to facilitate and enhance faster dispensation of justice. The fourth aspect is the demand for alternative dispute resolution mechanisms like mediation, conciliation and arbitration. This aspect of reform goes a long way in reducing the cost incurred by governments in civil litigations.

Owing to the fact that the Judiciary is our constituency, it is in line with this fact that we will now consider the positive impact of the Judiciary on law reform in Nigeria vis pronouncements of the Supreme Court of Nigeria.

THE SUPREME COURT AS AN AGENT OF LAW REFORM IN NIGERIA

A. Speedy Administration of Criminal Justice

The problem of delay in the administration of criminal justice remains a major challenge in Nigeria. Criminal trials are often delayed, especially when the litigants are able to engage the services of legal practitioners who could exploit the weaknesses in the system to delay or even frustrate the trial. The country is thus confronted with the unfortunate situation in which the criminal justice system has lost its capacity to conclude criminal trials especially the ones involving the wealthy and politically exposed persons. Meanwhile, the population of prisoners, mostly poor people who are held without trial is growing.^{xvii}

The worrisome state of the administration of criminal justice in Nigeria was recently commented on by the Chief Justice of Nigeria, Hon. Justice Mahmud Mohammed in a public dialogue organized by the Nigerian Bar Association in Abuja. He said that at the Supreme Court of Nigeria, there were over 800 appeals filed in 2014 alone. He further mentioned that the Court registry is currently burdened with over 5000 appeals and the panels of Justices are still hearing appeals filed in 2005.^{xviii}

For decades, the Supreme Court has upheld the need for speedy administration of justice in Nigeria. This is not to say that justice as it were should be sacrificed for speed. That will cause more harm than good eventually. The emphasis of the Supreme Court is that cases should not be delayed unnecessarily.

In the case of *Nyame v. Federal Republic of Nigeria*^{xix}, the former Governor of Taraba State, Reverend Jolly Nyame was arraigned before the High Court of the Federal Capital Territory for trial in respect of charges of embezzling funds belonging to the State government and several other counts of criminal offences or economic crimes under the Economic and Financial Crimes Commission (EFCC) Act 2004. Before the trial court could hear evidence on the substance of the case, the Counsel to the Defendant brought objections based on some legal points. The contention was that the trial ought to take place in Jalingo, Taraba State where the offences originated. The trial court had to first resolve this point one way or the other. It decided that the FCT High Court in Abuja was a proper forum as some of the elements of the offences charged took place in Abuja. Dissatisfied with this ruling or decision, the Defendant appealed to the Court of Appeal in exercise of his constitutional right of appeal. The substantive criminal proceedings were suspended until the decision by the Court of Appeal. Still dissatisfied, the Defendant appealed further to the Supreme Court which eventually upheld the decisions of both the trial court and the Court of Appeal and then directed that the trial should resume at the court of first instance, the High Court. This process of resolving the interlocutory objections took about three and half years. In some cases, such as that of the *State v. Al-Mustapha*^{xx} the erstwhile Chief Security of Officer to General Sani Abacha (late Head of State), the murder trial was delayed for about ten years through the raising of all sorts of legal objections. Further, in *Justice Akpor & Ors v Ighorigo*^{xxi} the Supreme Court set aside the judgment of the trial court because there was a delay of two years and nine months between conclusion of trial and judgment. In *Ekiri v Kemiside & Ors*^{xxii} the Supreme Court set aside a judgment which was about 16 months late. In *Joseph Ozoma & Ors v M. Osanwuta*^{xxiii} the judgment was given 17 years after the institution of the case. The Supreme Court ordered a retrial. In *Agiende Ayambi v The State*^{xxiv} Justice Olatawura, held that a criminal trial which lasted for over two years could not be said to have been conducted within a reasonable time.^{xxv}

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.

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^{xxvi} and the Criminal Procedure (Northern States) Act^{xxvii} and Administration of Justice Commission Act^{xxviii} 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.

All the provisions of the Act are geared towards ensuring that the system of administration of criminal justice in Nigeria promotes efficient management of all criminal justice institutions, speedy dispensation of justice, and protection of the rights and interests of the suspects and the victims of crime.^{xxix}

B. Prosecutorial Powers of Police Officers

Hitherto, the practice has been that police officers were restricted to prosecuting criminal cases in inferior courts to wit Magistrate, Customary and Area Courts. Although no statute expressly so provided, the practice only gained currency through judiciary pronouncements. Mustapha, JSC (as he then was) adumbrated the rationale thus:

“Historically, the police on their authority, especially at the Magistrate and Area Courts where prosecution may also begin by a complaint or by an aggrieved person against anybody ... Police Act was promulgated, the Magistrate Courts were manned by laymen mostly District Officers and the police had the unfettered powers of prosecution in Magistrate Courts and later Customary, Native and Area Courts”.

Corroborating this position, Belgore, JSC (as he then was) in his dictum quipped also that, from colonial period up to date, police officers of various ranks have taken up criminal cases in Magistrate and Area Courts.

Earlier in *Mandara v. A.G. Federation*,^{xxx} the Supreme Court per Irekefe held, "... Law and order in the state or court is maintained by the police ... Crime is investigated and ... prosecutions in the inferior state courts are done by the police".

In all these situations, emphases were on the fact that police officers only prosecute in the inferior courts and go no further. The question on whether or not police can prosecute in Superior Courts never formed an issue until the case of *Olusemo v. COP* which blazed the trail. In *Olusemo V. COP*^{xxxi} the Court of Appeal interpreted S. 23 of the Police Act to mean that any police officer can prosecute in Superior Courts but that such police officer should have been called to the Nigerian Bar.^{xxxii}

In notorious case of *Federal Republic of Nigeria v. Osahon*^{xxxiii} Per Onnoghen JSC held thus:

"the law being as it stands by virtue of the Constitutional provisions which is supreme, I hold the view that any police officer, irrespective of the fact that he is a qualified legal practitioner, has the power under Section 23 of the Police Act and Section 174 (1) (b) of the 1999 Constitution to institute criminal proceedings in any court in Nigeria."

The decision of the Supreme Court in Osahon's case has been a controversial topic of much heated discuss for years. Some hold the view that police officers who are not called to the Bar should not be permitted to prosecute criminal or any matter in Superior Courts while other commend the decision in Osahon's case, which permits police officers, whether or not they are qualified legal practitioners to prosecute criminal matters in Superior Courts. These divergent views have been laid to rest by the Administration of Criminal Justice Act (ACJA), 2015 removal of prosecutorial powers from members of the Nigerian Police Force (NPF) who are not lawyers.

Section 106 of the ACJA provides thus: “subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney-General of the Federation, prosecution of all offences in any court shall be undertaken by:

- a) The Attorney-General of the Federation or law officer in his Ministry or Department;
- b) Legal practitioner authorized by the Attorney-General of the Federation;
- c) A legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.

The above provision of the ACJA is in line with the clamour to promote speedy dispensation of criminal justice in the country.

According to Yemi Akinseye George (SAN) it is also a deliberate attempt to lay to rest the issue of lay prosecution as endorsed in the case of *FRN v. Osahon* in which the Supreme Court reaffirmed the powers of the police prosecutor, whether qualified as legal practitioner or not to prosecute in any court.^{xxxiv}

Section 106 of ACJA is profound as to lay to rest the issue as to the prosecutorial power of a police officer that is not a lawyer. In my opinion, the provision of the ACJA is commendable and it is a positive development for our legal system.

C. Electronically-Generated Evidence

Today, everyday transactions are conducted on electronic platforms. In 2014 Nigeria recorded over \$2 million worth of online transactions per week. Further, the e-commerce market in Nigeria is developing rapidly, with an estimated annual growth rate of 25%.^{xxxv}

The Evidence Act which was first enacted in 1958 remained largely archaic for several decades. The recent amendment of the Evidence Act^{xxxvi} in 2011 was intended to provide for the use of electronic evidence in court proceedings. Before the amendment, the admissibility of electronic evidence in court had been controversial due to the absence of specific provisions in the previous Evidence Act, even in light of Supreme Court decisions in *Esso WA v. Oyegbola*^{xxxvii} and similar cases in which it held that computer printouts were admissible.^{xxxviii}

More recent is the case of graft brought against Mr Femi Fani-Kayode, a former Minister of Aviation under the erstwhile administration of President Olusegun Obasanjo. The case *F.R.N v. Fani-Kayode*^{xxxix} was based on some computer print-outs of bank statements which allegedly showed the illicit transactions in which the Minister was implicated. His defence team objected to the admissibility of the statements on the ground that they were produced by computers and could therefore not be relied upon in a Nigerian court because the Evidence Act did not recognize such evidence. The High Court sustained the objection and the trial was put on hold to enable the Court of Appeal to rule on the issue of admissibility of the computer-generated bank statements. This delayed the main trial for about three and half years. The Supreme Court eventually ruled in favour of admissibility of electronically-generated evidence and ordered a retrial of the case by the High Court.

The Supreme Court decision underscores two key points. First, it recognizes and endorses the use of electronic evidence in Nigeria. Second, it reiterates the conditions for the admissibility of electronic evidence.

Further, the challenge created by the lacuna in the previous Evidence Act and the decisions of the Supreme Court in a plethora of cases necessitated the consequential amendment of the Evidence Act in 2011 to expressly provide for the admissibility of electronic evidence in our courts. Section 84 of the Evidence Act, 2011 provides for the admission of documents produced by a computer as evidence. Section 84 (2) provides for the admissibility of computer-generated evidence on four conditions:

- a) The statement sought to be tendered should be produced by the computer during a period when it was in regular use;
- b) During that period of regular use, information of the kind contained in the document or statement was supplied to the computer;
- c) The computer was operated properly during that period of regular use; and
- d) The information contained in the statement was supplied to the computer in the ordinary course of its normal use.

The amendment of the Evidence Act to admit computer generated evidence in court is a laudable amendment by the 7th Assembly of the National Assembly. It is indeed a positive development for our judiciary.

D. Seaward Boundary of a Littoral State

There arose a dispute between the Federal Government, on the one hand, and the eight littoral States of Akwa Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers States on the other hand as to the Southern (or seaward) boundary of each of these States. The Federal Government contends that the Southern (or seaward) boundary of each of these States is the low-water mark of the land surface of such State or, the seaward limit of inland waters within the State, as the case so requires. The Federal government therefore maintains that natural resources located within the Continental Shelf of Nigeria are not derivable from any State of the Federation.

The eight littoral States on the other hand claims that its territory extends beyond the low-water mark onto the territorial water and even onto the continental shelf and the exclusive economic zone. They maintain that natural resources derived from both onshore and offshore are derived from their respective territory and in respect thereof each is entitled to the “not less than 13 percent” allocation as provided in Section 162 (2) of the 1999 Constitution of Nigeria.

Section 162 (2) of the 1999 Constitution provides as follows:

“The President, upon the receipt of advice from the Revenue Mobilization allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density.

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.”

In order to resolve this dispute, the Plaintiff took out a writ of summons in the case known as Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors,^{x1} praying for:

"A determination of the seaward boundary of a littoral States within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the constitution of the Federal Republic of Nigeria 1999."

After carefully considering the submissions of all parties in the matter, the Court declared inter alia that the seaward boundary of a littoral State within the Federal republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999, is the low water mark of the land surface thereof or (if the case so requires as in the Cross River State with an archipelago of islands) the seaward limits of inland waters within the State.

The Court further held That the constitution of the Federal Republic of Nigeria 1999 having come into force on 29th May, 1999, the principle of derivation under the provision to section 162(2) of the constitution came into operation on the same day that is to say, 29th May, 1999 and Plaintiff is obliged to comply therewith from that date.

The decision of the Supreme Court in this case finally resolves the issue as to the meaning of seaward boundary of a littoral States within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the 1999 Constitution of the Federal Republic of Nigeria. The decision also makes up for the lacuna created in legislations^{xli} that relates to boundary determination of littoral States.

Notwithstanding the Supreme Court judgment in Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors, the adequacy of the present 13 percent derivation percentage was still generating considerable agitation in oil producing communities in Nigeria who are demanding autonomous control of the revenue accruing from their States. Such States including Akwa Ibom, Cross River State, Edo, Delta, Bayelsa and Rivers State are unwavering in their demand.

The feeling of discontent among oil producing communities has propelled ethnic militias to engage in kidnapping, blowing up of oil wells and the perpetration of heinous environmental crimes.

To ensure greater participation of Nigerians and host communities in the oil and gas sector, the Nigerian Oil and Gas Industry Content Development Act 2010 was enacted.^{xlii}

CHALLENGES OF LAW REFORM

a) Insufficient Funding

The major constraint of the Commission is inadequate funding by Government for its operations and this hampers the Commission's efforts. Over the years now the funds approved for the Commission for its overhead's expenditure remained too small to arrange any National workshop on its reform project. It has also not been possible to host the National Conference of Law Reform Agencies in Nigeria because of the shoestring budget it operated.

b) Shortage of Qualified Personnel

In spite of the approved staff establishment of 49 lawyers to man these four legal departments, there are less than 20 lawyers in the employment of the Commission as at 2012.^{xliii} Currently, staff issues still remain a challenge in the commission that needs urgent attention.

c) Overbearing Influence of the Minister

The functions of the Commission are unnecessarily fettered by approval of the Attorney General and it didn't end there. The Attorney General is required by the same Act to lay these proposals and recommendations before the President.^{xliiv} It is my opinion that it will make a better procedure if the approval is limited to that of the Attorney General knowing or bearing in mind that the final recommendation on reform shall go to the National Assembly and pass through the process all bills pass in both Houses.

d) Capacity Building

The Nigerian Law Commission (NLRC) should be strengthened financially, to enable it discharge its functions effectively. There is the need for the Nigerian Law Reform Commission to send law reform proposals straight to the National Assembly rather than sending it through the Attorney General to the President. In this way, the autonomy of the Commission is guaranteed for effective discharge of their duties.

e) Synergy of Institutions

There should also be a synergy between NLRC, Nigerian Institute of Advanced Legal Studies (NIALS), the National Judicial Institute (NJI) and other relevant institutions towards a comprehensive law reform programme.

CONCLUSION

Law reform is a very critical, indispensable, and integral part of all reforms in every contemporary society. It is the harbinger of all reforms and in Nigeria and beyond.

The Administration of Criminal Justice Act 2015, Evidence Act 2011, Nigerian Oil and Gas Industry Content Development Act 2010, the 1999 Constitution of the Federal Republic of Nigeria (as amended) among others, are classical examples of laws that have undergone several reforms in Nigeria since the return to democracy in 1999. The role played by the Nigerian Law Reform Commission and the Supreme Court of Nigeria, that led to these reforms cannot be overemphasized.

Notwithstanding the contributions of the Nigerian Law Reform Commission in the reform of obsolete laws, the Commission is faced with several challenges that have hampered its maximal effectiveness over the years. The Commission is bedevilled with inadequate staff, lack of funds, limitation of its powers and activities etc. there is therefore a need to cursorily proffer solutions to these challenges for the impact of the Commission to be maximally felt by the populace.

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ENDNOTES

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ⁱⁱ Ibid

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^{iv} https://drive.google.com/file/d/0B_cqwwSYzHNmOEILTGRtWGIESzg/edit?pref=2&pli=1 accessed on 19-02-2016 @ 12.30pm

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- ix Consultation papers takes a preliminary look at issues and principles which could guide proposals for reform and may sometimes be quite detailed with explanations of the legal problems, discussions of options for reform and tentative proposals.
- x Research reports contain results of research conducted or commissioned by the law reform agencies. These provide evidence useful for understanding the problems or evaluating solutions.
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