LAW REFORM PROCESS AND PRACTICE IN NIGERIA: ISSUES AND CHALLENGES*

Abstract

Law reform is the process of weeding out and replacing the obsolete and outdated laws within the legal system in order to attune the applicable laws to the prevailing realities and norms in the society. Nigerian Law Reform Commission, which was established about forty years ago, is the body formally charged with the responsibility for reforming Nigerian laws. But notwithstanding its age and mandate, the bulk of Nigerian laws have remained substantially out of date and out of touch; and this is largely responsible for the apparent stagnation in the socioeconomic and political development of Nigeria. This paper examined the major challenges and obstacles militating against progressive reform of Nigerian laws. The research methodology adopted by the researcher is purely doctrinal, whereas the approaches employed herein are chiefly analytical, descriptive and prescriptive. This paper found that challenges and obstacles militating against progressive reform of Nigerian laws stem from varying issues ranging from institutional issues through constitutional issues to political and social issues. This paper made a case for a holistic approach in addressing those issues and in *tackling those challenges.*

Keywords: Commission, Constitution, Law Reform, Legislature, National Assembly, Nigeria

1. Introduction

No meaningful reform in any civilized society be it social, economic, political or legal, could take place except through the instrumentality of law. It is for this reason that law is said to be an instrument of social engineering. But law cannot play its reformatory role in the society unless it is itself reformed through the process of law reform. Thus, according to Dahiru Musdapher, the erstwhile Chief Justice of Nigeria, law reform is 'the harbinger of all reforms'.[1]Law reform is the process of streamlining, modernizing and improving the applicable laws within the legal system so as to attune them to the *zeitgeist* of the time and the prevailing norms in the society.[2] Hence, through the instrumentality of law reform, new social, economic and political orders are established. Also, law reform provides a leeway for addressing the imbalances and injustices inherent in the society. Law reform generally takes the form of repeals, amendments, modifications, creation of brand new laws, consolidation and codification;[3] and it is formally carried out through the law commission: an official body established by law to propose legal reforms intended to improve and modernize the body of laws within a legal system, and it goes by different names in different jurisdictions. In Nigeria, it is called Law Reform Commission. At the federal level, there is the Nigerian Law Reform Commission, which is established by the Nigerian Law Reform Commission Act, 2004 to keep the Federal laws under constant review. On the other hand, various states of the Federation have their respective Law Reform Commissions for the purposes of reforming the relevant state laws. It is, however, instructive to note that Law Reform Commissions are not the only recognized agencies for proposing law reforms in Nigeria. Thus, law reforms could equally be proposed by the core agencies of the government like the legislature[4], the executive[5] and the Judiciary.[6] Also, law reforms may be proposed by civil society organizations or even by private persons.[7]

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[1]D Musdapher, 'Law Reform in Nigeria: Challenges and Opportunities', Lecture delivered by Hon. Justice Dahiru Musdapher, former Chief Justice of Nigeria at Federal University Dutse, Jigawa State, Nigeria on 20 May 2014, p.10 available at <http://fud.edu.ng/sites/default/files/media-content/LAW%20REFORM%20IN%20NIGERIA.pdf>(last accessed 30 January 2016).

[2]See the case of *Dario v U.B.N. Plc* (2007)16 NWLR (Pt. 1059) 99 at 141, where it was held that law is an organic phenomenon that develops as the society develops.

[3] O N Akun, 'The Process of Law Reform', [2012] 1(1) *NIALS International Journal of Legislative Drafting,* 102-127 at 103.

[4] P A Anyebe, 'Rules and Procedures Governing Legislative Process in Nigeria', [2016] 48*Journal of Law, Policy and Globalization,* 71-83, at 80. See also Order XII Rule 2(1) (a) of the Rules of the House of Representatives.

[5]*Ibid.* Order XII Rule 2(1) (b) of the Rules of the House of Representatives.

[6]*Ibid. See also* Order XII Rule 2 (3) of the Rules of the House of Representatives.

[7] P Y Mbaya and others, 'The Processes of Law Making in a Presidential System of Government: The Nigerian Experience', [2013] 9 (2) *Asian Social Science,* 106-114 at 109.

Notwithstanding the establishment of the Nigerian Law Reform Commission and the complementarity of the aforementioned agencies, Nigerian legal system has remained inundated with all manner of outdated, obsolete and anachronistic laws. This is evident from the fact that most English laws received into Nigeria during the colonial era are still in force in Nigeria even though most of them have been repealed in England where they originated. Thus, according to KefasMagaji, the Chairman of the Nigerian Law Reform Commission, 'in our statute books today, we truly have obsolete laws. These obsolete laws primarily exist because they were imported into the country by the colonialists.'[8] On the other hand, the bulk of the laws in force in Nigeria today, including the Commission's Act itself, are mere decrees and edicts promulgated through fiats in the heydays of military rule. Even though these decrees and edicts were legitimized at the dawn of the Fourth Republic by virtue of the saving clause of the 1999 Constitution of the Federal Republic of Nigeria, as amended (the 1999 Constitution)[9], which itself is a decree, their contents and characters have remained unchanged. Thus, one of the major challenges confronting Nigeria's nascent democracy is the reality of running a democratic government with these glorified decrees and edicts, and the solution to these problems apparently lies in goal-oriented law reform.

2. Establishment of Nigerian Law Reform Commission

The Nigerian Law Reform Commission is one of the federal executive bodies, which was established in 1979 via Decree No. 7 of 1979. This Decree, which currently operates as an existing law by virtue of the saving clause of the 1999 Constitution is now known as the Nigerian Law Reform Commission Act 2004 (the Act).[10] The Commission is a body corporate with perpetual succession and a common seal, and may hold, acquire or dispose of any property or interest in property, movable and immovable.[11] The Commission is, therefore, a juristic person with the capacity to sue and be sued in its corporate name. The Commission consists of four full-time Commissioners, one of whom is designated as the chairman and they are appointed by the President.[12]However, no person shall be appointed a full-time Commissioner of the Commission unless the person appears to the National Assembly to be suitably qualified by virtue of the holding of a high judicial office,[13] experience as a legal practitioner of not less than twelve years standing or being an eminent scholar in law.[14]The Act also empowers the President to appoint a Secretary for the Commission on the recommendation of the Attorney-General of the Federation; and the Secretary shall be the accounting officer of the Commission.[15] The Secretary shall assist the chairman in ensuring that all the rules and regulations relating to the management of the human, material and financial resources of the Commission are adhered to in accordance with the objectives of the Federal Government.[16] The Act also empowers the Commission to appoint such number of other persons to be employees of the Commission as it may deem fit.[17]

The tenure of office of the full-time Commissioners and Secretary of the Commission is five years in the first instance and the holders of such offices may be re-appointed for one further period of five years and no more.[18] On the other hand, the tenure of office of the employees of the Commission shall be determined by the Commission after consultation with the Federal Civil Service Commission.[19] While the Act specifically empowers the National Assembly to terminate the appointment of a full-time Commissioner of the Commission on grounds of misbehaviour or inability to discharge the duties of his office by reason of physical or mental incapacity, no such provision is made with respect to the Secretary of the Commission. However, it appears that the President who appoints the Secretary of the Commission without recourse to the National Assembly equally exercises similar disciplinary

[8] Opinion, 'Nigeria: 'Reforming Our Laws a Problem, Implementation a Greater Challenge', *This Day* (Lagos, 14 July 2015) available at <http://allafrica.com/stories/201507140958.html> (last accessed 17 March 2017).
[9]Constitution of the Federal Republic of Nigeria (Promulgation) Act, Cap. C23 LFN 2004, as amended, s. 315.
[10]Nigerian Law Reform Commission Act,Cap. N118 *L.FN.2004*.
[11]*Ibid*, s. 1(2).
[12]*Ibid*, s. 2(1).
[13]*Ibid*, s. 14. Note that a High judicial office means any judicial office not below the office of a Judge of a High Court.
[14]*Ibid*, s. 2(2).
[15]*Ibid*, s. 8(1) (a)
[16]*Ibid*, s. 8(1) (c).
[17]*Ibid*, s. 8 (2).
[18]*Ibid*,ss 2(4) and 8 (1) (b).
[19]*Ibid*, s. 8(3).

control over the Secretary. The Commission has power to regulate its proceedings and may make regulations and standing orders for this purpose and for the purposes of giving full effect to the provisions of its Act.[20] And where its regulations and standing orders permit it, the Commission may co-opt persons who are not members of the Commission; and such persons may attend the meetings of the Commission and advise the Commission on any matter referred to them by the Commission. But any person who is so co-opted shall not be counted for the purposes of quorum and shall not be entitled to vote at any meeting of the Commission.[21] Similarly, the Commission may, subject to its standing orders, establish such number of standing and *ad hoc* committees as it thinks fit to consider and report on any matter with which the Commission is concerned. And every committee so set up shall be presided over by a member of the Commission and shall be made up of such number of other persons who need not be members of the Commission.[22]

3. Functions and Powers of the Nigerian Law Reform Commission

The functions of the Nigerian Law Reform Commission are set out in section 5 (1) of the Act, which provides as follows:

> [I]t shall be the duty of the Commission generally to take and keep under review all Federal laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of Nigerian society including, in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with changes in the machinery of the administration of justice and generally the simplification and modernisation of the law.

It is evident from the above provision the Commission has the primary responsibility for the reform of both the substantive and procedural laws applicable in Nigeria. This point is further evidenced in the long title of the Act, which states that the purpose of the Act is 'to set up a Law Reform Commission for Nigeria to undertake the progressive development and reform of substantive and procedural law applicable in Nigeria'. The whole essence of the Commission is to simplify and modernize the applicable laws in Nigeria so as to attune them to the prevailing realities and norms in the society; and these are done by means of codification, elimination and repeal of obsolete, spent and unnecessary enactments, and the reduction in number of separate enactments. It must however be pointed out that the above provision does not contemplate creation of brand new laws as one of the means of effective law reform in Nigeria. This, it is submitted, is an oversight on the part of the framers of the Act, since enactment of new laws is one of the major means of law reform.

In discharging its functions under the Act, the Commission is generally accountable to the Attorney General of the Federal, who himself is the Chief Law Officer of the Federation.[23] Thus, the Commission is obligated to consider any proposals for law reform which is referred to it by the Attorney-General.[24] For example, the Attorney General may direct the Commission to undertake the examination of particular branches of the law or to prepare comprehensive programmes of consolidation and statute law revision. Although the Commission may on its own initiative prepare programmes for the examination of different branches of the law with a view to reforming them, such programmes must be approved by the Attorney General.[25] The Act specifically empowers the Commission to prepare draft legislation or to formulate proposals for reform pursuant to any programme which it has undertaken and forward the same to the Attorney General.[26] The Attorney-General is under obligation to lay before the President any draft legislation and proposals for reform forwarded to him by the Commission.[27] The Act is,

[20] *Ibid*, ss. 3 (1) and 13.
[21] *Ibid*, s. 3(3).
[22] *Ibid*, s. 4 (1) and (2).
[23] *Ibid.*See also 1999 Constitution s. 150 (1) and *Gov., Kwara State v. Lawal* (2007) 13 NWLR (Pt. 1051)347 at 379. This may be contradicted with what obtains in Canadian Law Reform Commission Act, which provides in its section 6 that 'the Commission is ultimately accountable … to Parliament for the conduct of its affairs'.
[24] *Ibid*, s. 5(2) (a).
[25] *Ibid*, s. 5(2) (a).
[26] *Ibid*, s. 5(2) (b)-(c).
[27] *Ibid*, s. 5 (6).

however, silent on the issue of the number of days the Attorney General will keep such draft legislation and proposals for reform before forwarding the same to the President. Similarly, the Act is silent on what the President should do with any draft legislation and proposals for reform forwarded to it by the Attorney General. In practice, such draft legislation and proposals for reform are usually forwarded to the National Assembly as executive bills by the President. But, the President is at liberty to make any modification which he deems necessary on such draft legislation and proposals for reform before forwarding the same to the National Assembly for necessary legislative actions. The President may even choose to abandon such draft legislation and proposals for reform altogether without breaching any law.

Furthermore, section 7 (1) of the Act empowers the Commission to consider proposals for reform of State laws from any State, group of States or all the States in the Federation and to submit reports thereon to the appropriate Attorney-General or Attorneys-General; but all the expenses incurred in the course of such exercise shall be borne by the Governments of the State or States concerned.[28] However, the Commission may, from time to time, on its own initiative, consider or put forward proposals for the consideration of the States' Attorneys-General, or such number of them as may be appropriate in the circumstances for uniformity between the laws of the States or, as the case may require, the group of States concerned.[29] In practice, the Commission only prepares model laws which interested states may domesticate with necessary modification to suit their peculiar circumstances.[30] For the purposes of the efficient performance of its functions, the Commission may conduct such seminars and, where appropriate, hold such public sittings concerning any programme for law reform as it may consider necessary from time to time.[31] Also, the Commission may, from time to time, obtain such information as to the legal systems of other countries, which appear to be useful for the performance of its functions.[32]

4. Obstacles and Challenges to Progressive Reform of Nigerian Laws

A number of factors are responsible for the obsolete state of Nigerian laws and the slow development of Nigerian legal system and they shall be examined accordingly under this section.

Lack of Autonomy of the Nigerian Law Reform Commission

One of the major weaknesses of the Nigerian Law Reform Commission is its lack of autonomy and independence even though section 5, subsection 7 of its Act expressly provides that 'the Commission shall be autonomous in its day-to-day operations.'[33] The above provision is clearly deceptive because the Commission was not only structured to be totally dependent on the executive, but also to be controlled by the executive. Apart from the unilateral appointment of some of its key officers by the President like its Secretary; the Commission is treated as a mere agency of the executive.[34]. Little wonder then the Commission is listed as one of the parastatals under the Ministry of Justice in the Ministry's website.[35] So, the overbearing influence of the Attorney-General over the Commission is unavoidable since the Attorney General doubles as the Minister of Justice. As we observed earlier, virtually every action of the Commission is subject to the whims and caprices of the Attorney-General, which was identified by KefasMagaji, the current Chairman of the Commission, as one of the major reasons for the poor implementation of the recommendations of the Commission.[36] Currently, many draft legislation and proposals for reform produced by the Commission are lying fallow in the office of the Attorney-General.[37]

[28]*Ibid*, s. 7 (3).
[29]*Ibid*, s. 7 (2).
[30]*Op cit,* (n 8).
[31]*Op cit,* (n 10) s. 5(5).
[32]*Ibid*, s. 5 (4).
[33]*Ibid.*
[34]This point was aptly made by Mr. KefasMagaji, the Chairman of the Nigerian Law Reform Commission, when he observed that Nigeria Law Reform Commission 'is an agency of the executive'. *Op cit (n 8).*
[35]See Federal Ministry of Justice website, available at <http://www.justice.gov.ng/> (last accessed 21 August 2017).
[36]*Op cit, (n 8).*
[37]*Ibid.*Some of these laws include Companies and Allied Matters Act 1990, Criminal Justice (Release from Custody) Special Provisions) Act 1977, Merchandise Marks Act 1915, Trade Marks Act 1965, Hire Purchase Act, 1965, Trustees Investment Act 1957 and Sale of Goods Act, 1893.

The vision of the brains behind the establishment of the Commission cannot be fully realized unless the Commission is truly autonomous and independent of executive control in its day to day operations. Subjecting the proposals of the Commission to the whims and caprices of the executive is counterproductive, because the executive will certainly not approve any proposal that may undermine its overbearing and overwhelming influence in the power equation in Nigeria. It is, therefore, submitted that every section of the Nigerian Law Reform Commission Act that unduly undermines the autonomy of the Commission should be expunged from the Act. In keeping with this, it is suggested that the Commission should be empowered to directly forward its draft legislation and proposals for reform to the National Assembly for the necessary legislative actions. This will, among other things, ensure timeous and effective implementation of the Commission's recommendations. In the alternative, the Law Reform Commission Act should be amended so as to impose an obligation on the Attorney-General to lay before the National Assembly any draft legislation and proposals for reform which it received from the Commission within a period not exceeding one year. A leaf may be borrowed from United Kingdom, which recently amended her Law Commissions Act of 1965 from which the Nigeria's Act was substantially copied.[38] By this amendment, the Secretary of State for Justice, an equivalent of Attorney General of the Federation in Nigeria, is obligated to prepare and lay before the Parliament, immediately after the end of each reporting year, a report on the Law Commission proposals implemented during the year and the ones not implemented as at the end of the year including the reasons for not implementing them.[39]

Interestingly, there is already a bill before the National Assembly for the amendment of the Nigerian Law Reform Act, namely 'A Bill for an Act to amend the Nigerian Law Reform Commission Act CAP N118 LFN 2004, to remove the bottleneck to the Commission's Reform initiative, ensure its Autonomy and bring the Act in conformity with the provisions of 1999 Constitution (As Amended) and for other matters connected therewith, 2017.'[40] It must however, be noted that the amendments proposed in the said bill do not truly address the issue of excessive executive control of the Commission as highlighted above. For example the said amendment bill is silent on the issue of unilateral appointment of the Secretary of the Commission by the executive, as well as the issue of subjecting the draft legislation and proposals for reforms prepared by the Commission to whims and caprices of the executive. It is, therefore, submitted that these fundamental issues should be factored into the said amendment bill before its passage into law; otherwise, the Commission will remain a mere appendage of the executive.

Inadequate Funding of the Nigeria Law Reform Commission

The process of law reform is not only very tasking, but also demands a lot of money.[41] A recent case in point depicting this obvious reality is the fact that about 10 billion naira was expended to organize the much celebrated 2014 National Conference, which merely produced a draft constitution to replace the much criticized 1999 Constitution.[42] However, notwithstanding the cost-intensive nature of law reform, only a paltry sum is allocated to the Commission in yearly appropriation bills. A perusal of the proposed 2017 Appropriation Bill shows that the sum of 447,751,897 million naira was allocated to the Commission for the 2017 fiscal year.[43] Out of this figure, the sum of 372,272,752 million naira was set aside for recurrent expenditure. What this means is that only a paltry sum of 75,479,145 million naira is available to the Commissions for its law reform activities for the whole year, since the recurrent expenditure is solely meant for the personnel and overhead costs. Effective law reform requires the inputs of the experts in the relevant field, who are usually not members of the Commission. It is for this reason that the Act

[38]Law Commission Act 2009 (c. 14) UK. This Act is an amendment to the Law Commissions Act 1965 (c. 22) UK.
[39]*Ibid*, s. 3A (1) & (2).
[40]Law Reform Commission (Amendment) Bill 2015, available at <http://placbillstrack.org/upload/SB27.pdf> (last accessed 21 August 2017).
[41] A I Bappah*et al*, 'The Impact of Law Reform on Economic Development in Nigeria', Draft paper presented at 49th Annual Nigerian Association of Law Teachers (NALT) Conference held at Faculty of Law Nasarawa State University Keffi, 22nd – 27th May 2016, p.13, available at <http://www.naltng.org/wp-content/uploads/2016/06/4.pdf>(last accessed 10 September 2017).
[42] 'Buhari and the 2014 National Confab Report', *National Mirror*,9August 2015, available at <http://nationalmirroronline.net/new/buhari-and-the-2014-national-confab-report/> (last Accessed 21Auguat 2017).
[43]Proposed Appropriation Bill 2017, p. 892, available at <http://placng.org/wp/wp-content/uploads/2016/12/2017-Budget-Proposal-to-NASS.pdf> (last accessed 15 March 2017).

specifically empowers the Commission to co-opt persons who are not members of the Commission to attend its meetings and advise the Commission on any matter referred to them.[44] Similarly, the Act empowers the Commission to conduct seminars and, where appropriate, holds such public sittings from time to time for the purposes of the efficient performance of its functions under the Act.[45] The engagement of these experts and the organization of these seminars and public sittings usually involve huge funds, and when these funds are not readily available, the performance of the functions of the Commission shall be hampered.

Furthermore, the Commission is neither empowered to receive donations nor borrow money from the public; and this deprives the Commission of what should have been an alternative means of augmenting the paltry finance. A Commission of this nature should not only depend on its budgetary allocation, but should also be free to receive donations and obtain loan from both national and international donors for the effective performance of its statutory functions, especially now that the government revenue is experiencing drastic and free fall.A leaf may be borrowed from the National Human Rights Commission Act, which specifically empowersthe National Human Rights Commission to obtain loan and accept gifts of land, money or other property as may be required on such terms and conditions as may be specified by the person or organization making the gift, if the terms and conditions are not inconsistent with the functions of the Commission.[46]Closely related to the issue of poor funding of the Commission, is the issue of poor remuneration of the Commission's members of staff. The functions and activities of Nigerian Law Reform Commission are essentially research based, but members of staff of the Commission are not treated as research officers, rather they are treated as normal civil servants. Thus, they have no access to research grants which are ordinarily available to other research officers, and this does not only affect the quality of research they carry out, but also affects the Commission's ability to attract and retain quality researchers in its payroll. There is, therefore, an urgent need for policy readjustment by the Federal Civil Service Commission in this direction so as to address this anomaly.

Application of Bicameral Legislature in Nigeria

Bicameral legislature consists of two separate chambers unlike unicameral legislature which consists of only one chamber. Nigeria operates a bicameral legislature at the federal level, which consists of the Senate and the House of Representatives, and the duo are jointly referred to as the National Assembly.[47] Thus, section 47 of the 1999 Constitution provides that 'there shall be a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.' Although, the Senate, which is usually referred to as the 'Upper Chamber', appears to be superior to the House of Representatives because it is constitutionally saddled with greater responsibilities than the House of Representatives,[48] for the purposes of lawmaking, both the Senate and the House of Representatives are at par with each other.[49] This is so because no chamber of the National Assembly could pass a bill into law without the concurrence of the other chamber.[50] Hence, by section 58 (3) of the 1999 Constitution, once a bill is passed by the Chamber where it originated, it shall be forwarded to the other Chamber for concurrence, where the bill shall once again go the whole hog of first, second and third readings;[51] and three options are open to the receiving Chamber.[52]

[44]*Op cit,* (n 10), s. 3 (3).
[45]*Ibid,* s.5 (5).
[46]National Human Rights Commission Act 2011 as amended, ss. 13 and 14.
[47]Note that unicameral legislature is operated at the state level in Nigeria. See 1999 Constitution, op cit, (n 9) s. 90.
[48] For example, it is the prerogative of the Senate to confirm all the key appointees of the President including the ministers, ambassadors and the heads of the federal executive bodies.
[49]*Op cit*(n 9), ss. 58 and 59.
[50] E Majebi, 'The Senate /House of Representatives imbroglio: A legal perspective', Vanguard (Lagos 27 November 2009), available at <http://www.vanguardngr.com/2009/11/the-senate-house-of-representatives-imbroglio-a-legal-perspective/> (last accessed 22 August 2017).

[51]*Op cit* (n 7) 112.
[52]*Ibid,* p. 112.

There are three options open to the receiving chamber in dealing with a bill which is forwarded to it for concurrence. Firstly, it may pass the bill into law without any amendment. But this is not always the case save in isolated cases in which time is of essence. For example, the Senate passed 46 bills forwarded to it for concurrence into laws without a debate three days to the end of the 7th National Assembly.[53]Secondly, the receiving Chamber may reject the bill in its entirety and that will be the end of the bill. Finally, the receiving Chamber may amend some provisions of the bill and return the same to the originating Chamber for concurrence vis-à-vis the amendments. If the amendments are not accepted by the originating chamber, a Conference Committee of the two chambers shall be constituted to harmonize the positions of both chambers and the resolution of the Committee shall be presented separately to both chambers for consideration and possible adoption. But if the two Chambers still disagree after the conference report, a compromise view will continue to be sought by the Conference Committee until an agreement is reached.[54]

It is clear from the foregoing that the bifurcation of the National Assembly into two chambers reasonably hinders speedy enactment of laws in Nigeria, and so constitutes a serious barrier to a progressive reform of Nigerian laws. This could be juxtaposed with what obtains in most West African countries where bills are easily passed into law because they operate unilateral legislature. As a matter of fact, only three countries in the West African sub-region, namely Nigeria, Liberia and Mauritania, operates bicameral legislature, and as Drexhage noted, 'only a minority of legislatures [in the world] is bicameral.'[55] As we shall see below, if a bill that was sent for concurrence was not passed by the receiving Chamber before the end of the legislative year, the bill shall die a natural death. Furthermore, the bifurcation of the National Assembly into a Senate and a House of Representative leads to unnecessary rivalry between the two Chambers and this takes its toll on the performance of their functions. This supremacy battle between the two Chambers usually leads to loss of scarce legislative time, which should have been meaningfully employed in the lawmaking business of the National Assembly.[56] This supremacy battle is also one of the major reasons why most bills that were sent from one chamber to the other chamber for concurrence are not ratified before the end of the legislative year.

Lack of Continuity in the Law Making Process in Nigeria

Section 64 (1) of the 1999 Constitution provides that '[t]he Senate and the House of Representatives shall each stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House'. But the Constitution does not state what will become of the unfinished businesses of the Senate and the House of Representatives before the expiration of the said four years. In practice, every unfinished legislative business of the National Assembly terminates at the end of the legislative tenure. This is so because neither the Constitution nor the rules of the Senate and the House of Representatives makes provision for a carryover of bills from the previous National Assembly to the next National Assembly. Hence, any bill that is yet to be passed into law by the National Assembly before the winding up of the current legislative year dies a natural death even if the bill had been passed in one Chamber and is awaiting the concurrence of the other chamber. In a bid to circumvent situations like this, which usually leads to waste of scarce resources and quality legislative time, legislators often resort to hasty passage of bills into law at the twilight of their tenure; and this does not only adversely affect the quality of laws so enacted, but also negates the logic underlying bicameral legislature. A case in point is the passage of 46 bills into law by the Senate of the National Assembly within 10 minutes on 3 June 2015 three days to the expiration of the Seventh National Assembly.[57] These bills were passed pursuant to Order 1 (b) of the Senate Standing Order 2011 as amended, which empowers the Senate to adopt special procedure on the bills forwarded to it for the

[53] Order 1 (b) of the Senate Standing Order 2011 as amended, empowers the Senate to adopt special procedure on the bills for concurrence.

[54]*Op cit*, (n 7) 112.

[55] B Drexhage, *Bicameral Legislatures: An International Comparison*, (Ministry of the Interior and Kingdom Relations Directorate of Constitutional Affairs and Legislation, 2015) 2, available at <https://djlane.wordpress.com/tag/abbe-sieyes/> (last accessed 22 August 2017).

[56] See E Majebi, 'The Senate /House of Representatives imbroglio: A legal perspective', *Vanguard* (Lagos 27 November 2009), available at <http://www.vanguardngr.com/2009/11/the-senate-house-of-representatives-imbroglio-a-legal-perspective/> (last accessed 22 August 2017).

[57] As we noted above, Order 1 (b) of the Senate Standing Order 2011 as amended empowers the Senate to adopt special procedure on the bills for concurrence.

concurrence.[58]But for that Senate's timely intervention, those 46 bills would not have seen the light of the day as they would have died a natural death upon the expiration of the Seventh National Assembly.[59]

However, such speedy passage of bills into law by the National Assembly at its twilight may still amount to effort in futility in the long run. This is so because the bills so passed under such circumstances may still not metamorphose into law if they were not assented to by the President before the expiration of the relevant National Assembly. Of course, one of the common legislative practices in Nigeria is that bills passed by the National Assembly shall not become law unless the President assents to them within the life of the very Assembly that passed it.[60] Such bills will also not see the light of the day if they were vetoed by the President since the National Assembly will no longer have time to reconsider them for possible overruling of the President's veto in accordance with section 58 (5) of the Constitution. A case in point is the Fourth Constitution Amendment Bill which was passed into law by the Seventh National Assembly at its twilight but was subsequently vetoed by the then President Goodluck Jonathan. Consequently, that all-important Amendment Bill did not see the light of the day despite the billions of naira it gulped and the determination of the National Assembly to overrule the President's veto because there was insufficient time for the Assembly to do so.[61] Against the backdrop of the foregoing, it is submitted that the relevant provisions of the Constitution and the Standing Rules of the Senate and the House of Representatives should be amended so as to ensure that the fixed tenure of the National Assembly does not hinder continuity in the law-making process in Nigeria. It is submitted in particular that the succeeding National Assembly should be under obligation to continue and complete every unfinished business of the previous Assembly. A leaf may be borrowed from the judiciary, where the succeeding tribunal is bound to continue and complete all the matters pending before the previous tribunal.

Preoccupation of the Legislators with Oversight Functions

The legislature the world over is the body primarily responsible for lawmaking. It is for this reason that legislators are generally referred to as the lawmakers. In keeping with this established norm, section 4 (2) of the 1999 Constitution specifically provides that the legislature, *to wit,* the National Assembly 'shall have power to make laws for the peace, order or good government of Nigeria and any part of it thereof...' But while lawmaking is the primary function of the National Assembly, it is not its only constitutional function because the Constitution also assigns other important functions to the National Assembly. One of those other functions of the National Assembly is legislative oversight. Legislative oversight is the process by which the legislative arm of the government supervises the exercise of the functions of the other agencies of government, especially the executive.[62] The logic behind the oversight function of the legislature is the need to ensure that those whose responsibility it is to implement the laws enacted by the legislature play by the rules. Thus, according to Okeke, 'the purpose of the oversight function is to ensure that laws are complied with by the executive in the day to day running of the government.'[63] Legislative oversight is, therefore, an essential aspect of legislative business without which

[58]J Agbakwuru and J Erunke, 'How Senate passed 46 bills in 10 minutes', *Vanguard* (Lagos 4 June 2015), available at <http://www.vanguardngr.com/2015/06/senate-passes-46-bills-in-10-minutes/> (last accessed 22 August 2017).

[59]*Ibid.*

[60] It, however, appears from section 2 of the Acts Authentication Act 2004 that once a bill has been passed into law by both Chambers of the National Assembly, the fact that it has not been sent to the President for assent before the expiration of the current legislative year will not affect the bill as the clerk of the National Assembly can subsequently forward the same to the President for Assent.

[61]Y Alli 'Jonathan Rejects Constitution Amendments', *Nations* (Lagos15 April 2015), available at <http://thenationonlineng.net/jonathan-rejects-constitution-amendments/> (last accessed 22 August 2017).

[62]O Salami "Improving Oversight Functions of National Assembly', *Pilot* (Lagos 24 May 2016), available at <http://nigerianpilot.com/improving-oversight-functions-national-assembly/> (last accessed 22 August 2017).

[63] G N Okeke, 'Oversight Functions of the Nigerian Legislature: A Case of a Joint Exercise.' A lecture delivered in February 2013 to the 2011/2012 Masters students on constitutional law at the Faculty of Law, Nnamdi Azikiwe University Awka Nigeria.

executive lawlessness and rascality would become inevitable.[64] It is for this reason that Schlesinger and Bruns observed that 'the concept of oversight exists as an essential corollary to the law making process.'[65]

The oversight function of the National Assembly is provided for in sections 88 and 89 of the 1999 Constitution. By section 88 (1) of the Constitution, the National Assembly is empowered to investigate the conduct of affairs of any person, authority, ministry or government department charged with the duty of or responsibility for executing or administering laws enacted by Assembly. On the other hand, section 89 (1) of the Constitution empowers the National Assembly to issue a warrant of arrest against any person who, after having been summoned to attend, fails, refuses or neglects to do so without a good cause or a satisfactory excuse. The foregoing provisions are complemented by the relevant provisions of the Legislative House (Powers and Privileges) Act 2004.[66] But the National Assembly should balance its oversight function with its lawmaking function in such a way that substantial legislative time shall be allocated to each one. But, in practice, the latter appears to be the major preoccupation of the members of the National Assembly because of its political implications for them as politicians.[67] However, this problem is not peculiar to Nigeria. Thus, while writing on the challenges confronting parliaments in Europe, a renowned British author, Douglas Verney, once noted that 'the watchdog [oversight] function is perhaps more important for a legislative assembly than that of law-making.[68] A number of factors are responsible for the preoccupation of the National Assembly with its oversight function and the apparent neglect of its lawmaking function, which appears to be one of the major factors responsible for the obsolete state of the bulk of Nigerian laws.

In the first place, legislators as politicians would always want to be in the public domain so as to remain politically relevant; and legislative oversight is one of the ways through which they meet this egocentric need. Similarly, legislative oversight is one of the major ways through which the legislators take their own pound of flesh whenever they have a score to settle with the executive. A recent case in point is the threat by the Senate that the National Assembly would not hesitate to invoke its legislative powers to deal with the executive if it continued to harass and intimidate the lawmakers through the security agencies.[69] Furthermore, the legislative oversight is a lucrative avenue through which the legislators corruptly enrich themselves. This is so because the legislators often hide under their oversight function to extort money from various government agencies and functionaries appearing before them. Thus, the erstwhile Director-General of the Securities and Exchange Commission (SEC), Ms. Aruma Oteh, once accused the then Chairman of the House of Representatives Committee on Capital Market and Institutions, Mr. Herman Hembe, of demanding all manner of money from the SEC including a whopping sum of N39 million to organize a public hearing on capital market, and another N5 million to ensure that SEC was giving a clean bill of health by the Committee.[70] Finally, the overconcentration of the legislators on the oversight function also stems from the fact that most of them lack the requisite lawmaking expertise and skills. As a matter of fact, most of our lawmakers do not understand the very essence of law in the society, and in a bid to cover-up their widespread ignorance in the field of law and lawmaking, they tend to hype their oversight function.

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[64]Y Dogara, 'Legislative Oversight as Critical Component of Good Governance (1)', *Leadership*, 11 April 2016, available at <http://leadership.ng/features/516972/legislative-oversight-critical-component-good-governance-1> (last accessed 22 August 2017).

[65]A M Schlesinger and R A Bruns, *Congress Investigates: A Documented History*, 1792-1974 (Chelsea House 1975) 10.

[66]Legislative House (Powers and Privileges) Act Cap. L12 L.F.N. 2004, ss. 4 and 6.

[67] E J Tom and A J Attai, 'The Legislature And National Development: The Nigerian Experience', (2014) 2 (9) *Global Journal of Arts Humanities and Social Sciences* 63 – 78 at 66.

[68]D V Verney, 'Structure of Government' in J Blondel (ed), *Comparative Government: A reader* (Macmillan, 1969) 167.

[69]H Umaro, 'Harassment, Intimidation of Lawmakers: Senate to Invoke Legislative Powers to Deal with Further Acts', *Vanguard* (Lagos 5 May 2017) available at <http://www.vanguardngr.com/2017/05/harassment-intimidation-lawmakerssenate-invoke-legislative-powers-deal-acts/>(last accessed 22 August 2017).

[70]E J Nwagwu, 'Legislative Oversight in Nigeria: a Watchdog or a Hunting Dog?', (2014) 22 *Journal of Law, Policy and Globalization* 16-24 at 19.

5. Conclusion and Recommendations

Law reform is the key to the socioeconomic and political development of every nation. It is for this reason that the Nigerian Law Reform Commission was established about forty years ago to keep Nigerian laws in constant review. But the Commission has partially failed to live up to its mandate due to its lack of independence, which is largely responsible for the poor implementation of its recommendations. There is therefore an urgent need to make the Commission wholly independent of executive control. Hence, the Commission should be empowered to forward its proposals and recommendations directly to the National Assembly for necessary legislative actions, instead of the current practice of submitting the same to the Attorney General of the Federation, who hardly implement them. Also inadequate funding of the Commission undermines the performance of its functions, because it affects its capacity to secure the services of relevant experts, as well as its capacity to organize seminars and public sittings and hearings, which are essential aspect of law reform process. Adequate funds should, therefore, be allocated to the Commission in the yearly appropriation bill. Also, the Commission should be empowered to receive grants or donations from donor organisations and general public. The current practice of limiting the Commission's source of funds to its budgetary allocation has become unacceptable especially now that the government revenue is dwindling. Also the staff of the Commission should be treated as research officers and not as normal civil servants since their jobs are essentially research based. Treating them as such will enable them to have access to research grants, which are ordinarily available to research officers; and this will in turn enable the Commission to attract and retain quality researchers in its payroll. Finally, the overconcentration of the legislative houses in Nigeria with their oversight functions poses serious challenge to law reform in Nigeria. Hence, there is a pressing need for the legislators to balance their oversight functions with their law-making functions in such a way that none shall be sacrificed at the altar of the other.