6
THE PROCESS OF LAW REFORM

By
Oparaku Nzoma Akun

Introduction

Society’s perceptions have changed over time as the composition of society and the moral and ethical values held by the community have evolved. Thus the legal system has been required to implement law reform to uphold the ever changing values of society. One of the hallmarks of advanced society is that its laws should not only be seen to be just but also that they be kept up-to-date and be readily available and accessible to all who may need them or are affected by them.

The problem of keeping the law relevant to changing times faces every legal system; law reform has become increasingly vital to every legal system. Law also is a key leader and participant in ensuring the practical application of the key values of a given nation.

Law can be defined as a system of rules and guidelines which are enforced through social institutions to govern behaviour. Laws are made by governments, specifically by their parliaments. The law shapes politics, economics and society in countless ways and serves as a social mediator of relations between citizens.

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. Legal reform should be an integral part of all other reforms. Legal reform is a veritable tool

for implementing necessary reforms to balance competing interests, create a balanced and sustainable economy and build a sustainable government – civil society relations.²

Law reform usually takes the form, of Repeals, creation of new laws, consolidation 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.³ Consolidation is the bringing together of provisions scattered among many statutes.⁴

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, academic lawyers, 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. Many LRAs consult widely before settling on their programmes of work

This paper shall examine, the form and process of law reform, initiators of law reform process, law reform agencies and commissions and the Nigerian law reform commission Act.

Procedure for Law Reform
A typical law reform process will involve the following procedures;

---

³ Micheal Zander, the law- making process. Winfield and Nicolson.london. page 283.
Starting the law reform process
Working out the issues and problems and involving the community
Consultation papers
Getting Input and ideas from the community
Reporting recommendations

1) Starting The Law Reform Process
The Attorney General or the head of particular jurisdictions minis try of Justice written the law reforms Commission/Committee s/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 government’s 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.

Further more on this phase of the Procedure the head Commissioner or chair person appoints Commissioners to take responsibility for the reference and the secretary allocates research staff.

On some Occasions the reform body engages consultants ie lawyers and other experts to assist with reference, the group of Commissioners handling a particular reference is called a division.

5. Ibid.
6. Ibid.
2) **Working out the Issues**

A research and publication plan is 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 publicise in the polity that the review is taking place. Preliminary consultations will be carried out. This will include; consulting people and organisations 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.  

(3) **Consultation Papers**

The law reform body prepares one or more consultation papers or a research report 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 publishes the release of consultation papers or research reports in the media and other means of publication to enable the public make comments and contributions.

8. The Law Reform Network <http://www.lawreform.net/ >

9. Consultation papers take 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.

10. 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.

11. Copies of publications are distributed widely to lawyers, academics, likely to be interested organisations, individuals, and made available on the relevant law reform body website.
4) **Getting input From the Public**

Contributions to references are known as submissions\(^1\) 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:

- a) Public meetings
- b) Public opinion surveys
- c) Participatory talk-back radio interviews.

5) **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\(^2\).

**Sources of Law Reform Initiatives**

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

**Government Policies**

---

1. Usually submissions are written, there is no set form and a simple letter will do often times. It could also be made orally, such as phone calls, private discussions or at public hearings.
2. See note 2.
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 promises, Political party leaders, ministers, their advisers and staff, Public service Council of Australian Governments and Ministerial Councils.  

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.

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.

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

15. Micheal Zander Supra see note 3 at page286.
rights commission, and in Lagos state the newly constituted law reform committee.

**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. The Economic and Financial crimes Commission.

**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.

**Judicial Decisions**

Judicial decisions are an important source of law reform. This is especially so for Nigerian labour law since 1981. 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.

**Law Reform Agencies**

*Its first stated aim is to ‘ensure the law is as fair, modern, simple and cost-effective as possible’ and as such it is engaged not only in the process of developing new proposals, but also in consolidating the existing statute law in an area, suggesting revisions to statutes (with a particular interest in updating, or*

---

removing, old and obsolete laws and eliminating loopholes), and, at its most ambitious, **codifying** whole frameworks of law (thus reducing years of common law and statutory development to single ‘codes’ or pieces of legislation)**17**

Law Reform Agencies are expert, advisory law reform bodies, independent of government. They are established to review a variety of areas of law and to recommend any changes needed. Their programmes of work need to be agreed with government, and they are normally accountable to government.**18**

They have a variety of names such as Law Reform Commission, Law Reform Committee, Law Commission and Law Reform Institute. They have brought whole new features to the legal landscape.

Key features of LRAs are their independence, their expertise, their focus on law reform, and their continuity. Other important characteristics are their commitment to full consultation and public participation and their ability to handle new and complex problems, together with their thoroughness, use of outside volunteer experts, openness and accountability. Rightly, they vary greatly according to local circumstances. Especially in smaller jurisdictions, they do not need to be large to be worthwhile.**19**

They can provide principled and imaginative new law, and can be catalysts of change; responsive to the world around and to the public they serve. Even on a conservative basis, there are some 60 LRAs across the world, with responsibilities to many millions of people. The most typical LRA covers a country or

---


18. &lt;http://www.calras.org/Other/future_commonwealth.htm#fin2&gt; last visited 19-05-2012

19. Ibid...
state, is substantially autonomous and has authority to review a wide range of areas of law. However, LRAs come in many shapes and sizes. For example:

- Some cover countries with populations of well over a hundred million people while others are for jurisdictions with populations well under a million (for example, British Virgin Islands and the Northern Territory of Australia), and for many more there are populations in between those numbers.
- The countries concerned vary greatly in other ways. Their Gross Domestic Product varies immensely. Some are heavily industrialised, and others are much more agricultural. Some have high-density populations, and in others the populations are very scattered.
- The LRAs vary greatly in their size and capacity. For example, while one may have one part-time Commissioner, another may have several full-time Commissioners. Some have very few staff, and others have large teams.
- The responsibilities of LRAs most typically concentrate on straightforward reform of the law but that field can be viewed broadly or narrowly. Some also have other responsibilities - for example, taking measures to harness law and the legal process in the service of the poor and keeping under review the system of judicial administration.
- While most are in countries with a long common law heritage, others are in countries with very different legal environments and traditions.\(^\text{20}\)
- While the majority cover a complete country, a significant minority cover a single state, territory or

\(^{20}\text{Ibid.}\)
province (for example, in Australia, Canada and Nigeria) with other LRAs often covering the remainder.

- While most are statutory, some are not, for example in India, Alberta (Canada) and Northern Ireland.
- LRAs vary greatly in how long they have been established, as demonstrated immediately below.

In addition, while law reform is the core activity of virtually all LRAs, many are also involved in other work that is closely related to reform, including codification, revision, consolidation and repeals. A generous definition would include, among LRAs, those standing bodies which are established to keep certain limited areas of law under review, for example, criminal law, company law or criminal codification. Until an LRA is established, law reform is usually undertaken by government ministries, governmental committees, parliamentary committees and other committees and bodies established for one-off reviews and inquiries constituted especially to consider a particular aspect of the law. This is generally done on a part-time and temporary basis. Such alternative mechanisms are worthwhile but very far from ideal. An LRA is established to overcome the disadvantages of transient bodies.\(^\text{21}\)

**What they do**

Some areas of law are relatively standard or core subjects for law reformers. They include substantive law in areas such as criminal law, civil law, family law, commercial law, and public and administrative law. In fact, LRAs frequently review key areas of law which affect large sections of society. The criminal law is clearly central in any country, providing justice as well as seeking to safeguard victims.\(^\text{22}\)

\(^{21}\) Institute for legal reform. \(<\text{www.institute for legalreform.com/}>\).

\(^{22}\) See note 15.
The following are just a few examples of important projects by LRAs in different jurisdictions:

- a whole justice system (New Zealand, South Africa and Western Australia);
- sentencing powers (Uganda, Nigeria and South Africa, and New South Wales and Tasmania in Australia);
- transformative justice (Canada);
- security legislation (South Africa);
- anti-terrorism legislation (India and Pakistan);
- bribery and corruption (Fiji);
- domestic violence (South Africa);
- electoral laws (Canada and India);
- harmonisation of laws with neighbouring states (Kenya);
- Money laundering (South Africa); and
- Establishing a family court (Mauritius).

Different jurisdictions use different methods for identifying topics for review by LRAs. However, it is important that LRAs have a role in identifying them, often with government. Indeed, in some jurisdictions LRAs take by far the major part in identifying and deciding about their future work. This process is clearly of central importance because it not only dictates the work of the LRA over the period of the project but it is also closely connected with the ultimate success of the LRA’s work.\(^23\)

**The Advantages of Independent Law Reform Agencies**

An essential feature and a key advantage of an LRA is its independence, especially from government but also from all others. This independence has a particular value as it demonstrates that the LRA’s views are objective and impartial and are not dependent on others’ views. The Executive and the

\(^{23}\) *Ibid.*
Legislature frequently need and value specialist advice in the planning and formulation of law reform. This advice is best provided by an independent body. An LRA is independent in the recommendations it makes as to the reform of any particular area of law. An LRA should have no preconceptions and no in-built bias. It should therefore be composed of Commissioners and staff who do not have strong allegiances, who have open minds and who are sufficiently resilient not to be persuaded by any pressure other than sound argument. It is a body that has nothing to fear from expressing its views, after a sound law reform process.

An LRA’s independence, together with its practice of wide public consultation, enhances the credibility of its work with everyone, including politicians of all parties. It sets an LRA apart and enables it to be more vibrant, innovative and authoritative.

An important aspect of this independence is the LRA’s intellectual independence, the LRA must be, and must be perceived to be, scrupulously free of political partisanship or association with private or special interests. It also means that the culture must be sufficiently robust to weather strong criticism at times, at all stages of the process. Few other institutions in our society are as accustomed as LRAs to sharing openly their work in progress.

However an LRA’s independence should be subject to checks and balances in certain areas. First, an LRA’s work programme is generally agreed between the Agency and the government. Secondly, an LRA is publicly accountable, in reporting to the Minister at least annually, in having all its reports and programmes of work placed before parliament and published, and in complying with public sector requirements regarding, for example, openness, management and finances.

Besides, an LRA only makes recommendations as to the reform of the law. Rightly, it is only parliament that can change the statute law.\textsuperscript{25}

\textbf{Safeguarding Independence}
Key ways in which governments have to honour this independence include ensuring that appointments of Commissioners are non-political and free from conflicts of interest, that the terms of reference for law reform projects are not designed to produce any particular outcome and that there is no improper governmental or other external pressure upon the LRA to produce any particular recommendations. The great majority of LRAs are established by statute. Apart from the stability and stature that this tends to provide, the statute often ensures that the LRA has a separate existence from government.\textsuperscript{26}

When there is a mature and public balance between independence and accountability, an LRA should establish strong, constructive and open links with others. They include government ministers, ministries and departments, politicians, the Civil Service, the judiciary, legal and other academics, the media and all areas of the legal profession, NGOs and other groups and individuals with an interest in law reform and in the particular areas of law under review at a particular time. An LRA may need to be relatively ambitious and assertive to ensure, for example, that it obtains consultation responses from all the key experts in a field; on the other hand, an LRA needs to be humble in how it projects itself and its work and recommendations.

\textbf{Volunteer Input}

\textsuperscript{25} Ibid.

\textsuperscript{26}
Another major benefit of an independent LRA is its ability to generate and harness an extraordinary volunteer effort in the course of its work, to supplement in-house research and expertise. Many LRAs obtain the assistance and involvement of the leading experts in the topics that they are reviewing - whom the LRA could not afford to pay what they are worth or could easily command as consultants in the private market. It is vital to create and maintain confidence in the body carrying out the work of law reform. That confidence is needed by the government, which is the ultimate recipient of the LRA’s recommendations. It is also needed by key participants in the law reform process, including members of the public, community groups, minority groups, NGOs, interest groups, professional associations, academics, the legal profession, the judiciary and the government. They must be sure that they are participating in a project of real significance if they are going to take the time and make the effort to provide evidence and views, respond to consultation papers and discussion papers and take a real part in the process of law reform.

**Expertise**

An LRA builds up a fund of expertise, knowledge and specialist contacts in both the law and law reform. This is vital for successful law reform. It increases the likelihood of consistently high quality work. The LRAs’ reputation and independence also attract to it over the years Commissioners, staff and consultants of great ability. An LRA’s methods should ensure that its recommendations are thoroughly worked through before they reach the government and parliament. Where each Commissioner contributes to the overall work, including projects led by other Commissioners, this enables collegiate decisions. It ensures recommendations are from a wider focus than would be possible if they were based on the work of a single specialist.
LRAs are normally intended to be capable of undertaking work in the great majority of areas of law (substantive, evidential and procedural). Their ability and willingness to accept such a variety also has the advantage of providing a standing body ready to undertake work in most areas of law. While the Commissioners and staff will often have relatively broad previous experience, it can be supplemented crucially by assistance from experts and others outside the LRA. The consultants are mainly legal experts who assist with aspects of particular projects or conduct the empirical research that is sometimes needed. LRAs often also appoint working parties of experts, representatives of Non Governmental Organisations and other interested parties.

Open, thorough, imaginative and responsive consultation procedures assist an LRA in capturing the attention of additional expertise from a wide range of public consultees who may respond to a consultation document. Best practice would include acknowledgement of consultees’ contributions, recognition in the final report and referencing where consultees’ responses have influenced final recommendations. An LRA gains the skills to undertake in-depth and sustained research, including legal, practical, social and empirical research. However, the strong links that an LRA forges with others enable it to benefit from the pooled knowledge and skills available and from a multidisciplinary approach. An LRA cultivates this dynamic relationship and the resulting interplay of legal ideas and arguments bear fruit, for example, in creativity and discussion of specific issues within law reform projects.

A distinctive feature of several LRAs is the availability of legislative drafters to the LRA. They draft all the LRA’s law reform legislation, which saves the government’s legislative drafters a substantial task at a more pressurised time later. The process of drafting the legislation also helps the LRA with its thinking and recommendations.
**Focus**

An LRA has the great advantage of having a central focus and purpose: law reform. As a result, it can concentrate its energy and resources on this single purpose and is saved from the distractions, interruptions and trouble-shooting faced by many other bodies, not least by government and ministers and their ministries all over the world. Glanville Williams began “The Reform of the Law” by stating:

> Law reform tends to lag behind other priorities unless there is an LRA. Lord Gardiner noted: “It may be your Lordships’ experience that things in life do not get done unless it is somebody’s job to do them. It has never been anybody’s job in England, who could do it, to see that our law is in good working order and kept up-to-date”²⁷. An LRA is able to devote its resources, time and energy to this purpose. There is great benefit in having Commissioners and staff whose work is devoted to improving the law. A body established for the purpose of law reform is able to undertake reviews of subjects that are broader and more closely interlinked than would be feasible for others.²⁸

**Continuity**

There is enormous advantage in having law reform undertaken by a body which is continuing in existence. Continuity enables an LRA to acquire and apply the great expertise and the resources that have been mentioned above. It also gains

---

²⁷. Micheal Zanders supra see note 3 at page 274.
considerable experience in the processes that are most useful for the complex task of law reform. It avoids successive bodies each having to learn the skills. It can help productivity and provide opportunity to establish a sound reputation. It also increases the justification for investing properly in modern technology, accommodation and library facilities.

In addition, projects are often linked by their subject matter, so that the knowledge and experience gained in one project benefits those working, often later, on another; and the LRA’s continuity ensures a consistent approach both to particular areas of law and to the law reform process --which is otherwise most unlikely. A permanent body makes it more possible to engage in a systematic review of the law, a statutory requirement for many LRAs. As a standing body, an LRA is able to discuss the reasons for its recommendations, and its strengths and any weaknesses with the government of the day. Continuity enables the LRA to have discussions with, and give responses and make submissions to, other bodies which consider similar issues some years later.

**Role and Effectiveness of Law Reform Agencies**

Law Reform Agencies are agents of change. They may have the opportunity to be at the forefront of legal development. For example, they may be able to lead the way nationally in identifying areas where there is a need for new law, in reviewing areas of law which are being affected by new features of life and in recommending imaginative new legislation. Examples of such fields of law are: environmental law; globalisation; internet law; e-commerce; HIV/AIDS; genetics-patenting; human rights; computer crime; rights of indigenous people; new family relationships; international trade; international aid; poverty; and ethics.\(^\text{29}\).

LRAs may also be able to use initiative and innovation in methods of law reform. For example, they may use public meetings (both general and focused on target groups), consultation forums, the media and websites – both for assistance in particular law reform projects and for advice about the areas of law which cause greatest concern and which might therefore be reviewed by the LRA. In addition, opinions are not only obtained from all relevant quarters but are also taken fully and seriously into account. Another example is that they may be able to publish their work with an eye to capturing the attention and imagination of their readership, with part-reports geared to special interests or special needs of language, culture, disability etc. on the internet, or on CD as well as in printed text, with a range of summaries for different readerships. An LRA saves government ministries considerable resources in actually conducting the law reform process and producing recommendations.

Successes
The following are just a few samples of many particular successes:

- Since 1994 the South African Law Reform Commission has submitted 62 reports to the Government and published 57 discussion papers and 25 issues papers, contributing significantly to the fundamental transformation of the country into one that is non-racial and non-sexist. It has earned the respect of the new democratic Government for its work and independence.

- The Uganda Law Reform Commission in 2003 published a Revised Edition of the Laws of Uganda, containing 350 revised Acts from 1964 to 2000, with the subsidiary
legislation; it was brought into force by Statutory Instrument No 69 of 2003.

- In Scotland there was constitutional change, resulting in the establishment of a new Parliament; the Scottish Law Commission contributed 6 statutes to the next 5 years’ legislation. These ranged from the Abolition of the Feudal Tenure etc (Scotland) Act 2000 to the Tenements (Scotland) Act 2004.

- The Malawi Law Commission reviewed the country’s constitution in 1998.

- The Law Commission of India reviewed the law on corrupt public servants’ forfeiture of property (166th Report, 1999).

- Following reports by the respective LRAs in relation to dealing with mentally incapacitated people, new legislation has been introduced in England and Wales (the Mental Capacity Act 2005), and separately in Scotland (the Adults with Incapacity (Scotland) Act 2000).

The Impact and Implementation of Law Reform Agencies’ Recommendations

Law Reform Agencies have the task of making law reform recommendations. Law reform has far better prospects of genuine widespread acceptance if it is produced independently of the government and others, or at least where an LRA has functional autonomy from the executive and other arms of government. LRA’s should fully recognise that it is the

---

30. Unfortunately for the Nigerian law reform commission the commission tenders its recommendation to the Attorney general who in turn tenders same
responsibility of government to decide the outcome of their recommendations, and whether to implement them by legislation or alternative means, or not at all. However, the nature of their recommendations should not be influenced by political receptivity to their approach or the likelihood of implementation by the government of the day. This level of independence can be difficult to achieve in practice. Real independence may be compromised where, for example, Commissioners may be reticent to suggest reforms which are not politically expedient where this may damage their chances of agreeing suitable terms of reference with the government for dependent or subsequent projects.

The great majority of experienced observers recognise that, while an LRA’s implementation rate may be one of many ways of measuring success, it can never be a key indicator as it may bear little relationship to the quality and usefulness of the LRA’s work and as so many factors about implementation are far beyond the control of the LRA. While implementation rates themselves are often commendable, they are sometimes surprisingly low.\footnote{www.namgronline.cmo/section/defence/security/minister-lands-army-law-reform.}

\textit{(a) Legislation}

New legislation is the most typical impact of LRA recommendations. Experiences of law reform legislation undoubtedly differ between LRAs. The rate of legislative implementation varies between LRAs and over different times in their histories.

\textit{(b) Alternatives to Legislative Implementation}

before the President. This an anomaly and deviates from the very essence of LRAs which is independence and autonomy. see Section 5(6).

31. \footnote{www.namgronline.cmo/section/defence/security/minister-lands-army-law-reform.}.
LRA work has important alternative uses. Many LRAs occasionally publish reports which do not call for legislation at all. This may be because they do not recommend any change in the law, because their recommendations can be implemented without legislation or because they are intended purely as guidance, as advice or as vehicles for discussion rather than for law reform.

In addition, legislation is not the only way in which some recommendations can take effect. Some can in effect be implemented by the courts.

LRA reports should be authoritative and have a significant effect in changing views and shaping attitudes, and in providing guidance to the courts on particular subjects. This can lead to a gradual change in the law by developments through the courts. In reported cases in England in a recent two-year period, over 40 referred to the work of the Law Commission for England and Wales.

Collaborative Working among Lra’s
Some of the current co-operative activities between LRAs need to be developed much further. The following are examples:

1. **Providing Information about Each Other’s Projects**
   It clearly makes sense for an LRA which is reviewing an area of law to consider reviews of that area which have been conducted elsewhere – rather than the courts are well used to looking at authoritative decisions in the courts in other jurisdictions. Having made due allowance for all the differences between the jurisdictions and the factors surrounding the area of law, an LRA can often find extremely useful ideas in the reports of another LRA. Frequently, LRA reports cite reviews in other countries ideally with an evaluation of how implemented recommendations have worked in practice.

   (2) **Co-operative Work on Particular Reviews**
The number of law reform tasks with international significance has grown commensurately with the advance of global technology. There can be opportunities for LRAs to co-operate on reviews of particular areas of law. This would most likely arise where either there are similar problems with an area of law in different jurisdictions or where an area of law has strong cross-border importance. The co-operation can consist of mutual exchange of papers, or be as full as joint working: this is difficult but, if successful, can provide an even better and more acceptable outcome. This for Nigeria is more so backed up by law.  

(3) Mutual Support and Smaller or Newer Law Reform Agencies

Mutual support can be particularly helpful for LRAs which are newly established or in smaller jurisdictions – and therefore probably smaller themselves. The deliberately independent and separate position which most LRAs have tends to make them lonely and isolated places to work – even more so if they are small. Besides practical inter-action and support, many LRAs therefore greatly value encouragement and moral support from others across the world with the same role in their jurisdictions.

(4) Visits, Exchanges, Secondments and Internships

A good deal of interaction between LRAs already takes place by way of individual visits, which generally prove extremely valuable. These opportunities should be expanded, both in number and sometimes in duration. More LRAs might be prepared to have a Commissioner or staff member seconded to them, or to participate in internships or exchanges of personnel.

32. Section 5(4) For the purpose of the efficient performance of its functions under this Act, the Commission may, from time to time, obtain such information as to the legal systems of other countries as appears to it likely to facilitate the performance of any such functions.
(vi) Regionally
There are several regional arrangements in place.
- An Australasian Law Reform Agencies Conference has been a regular feature since 1973.
- The Federation of LRAs of Canada covers the six LRAs across Canada.
- The Association of Law Reform Agencies of Eastern and Southern Africa was formed in 2000 and covers some 13 countries.
- There have been meetings of the LRAs of the Indian subcontinent.

(vii) Across the Commonwealth
The Commonwealth Association of Law Reform Agencies (CALRAs) was formed to foster and promote international cooperation on law reform. CALRAs has the potential to take forward initiatives to strengthen independent law reform in the Commonwealth.

For many years there has been strong and widespread informal support for establishing a Commonwealth Association to encourage, facilitate and take forward cooperative initiatives in law reform. and has links to the websites of LRAs and others across the world.

has been granted accreditation to the Commonwealth. It has been established with the strong support of the Commonwealth Secretariat. The establishment of such an association is particularly appropriate at this time. Most existing LRAs are now well established, many are in a time of change – both in the law, in legal systems and in public sector management – and it is a time of particular pressure on many.

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. The Commission, which is a body corporate, and is autonomous.

**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 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.

**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

---

33. Sec.1.
34. Section 2 (1).
35. Section 2 (2).
36. Section 2 (4) and (5).
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.

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.

Critique
All functions of the commission must be approved by the attorney general who in turn by virtue of section 5 sub section 6 must lay these proposals and programmes for reform by the commission before the president and not the national assembly who has the duty of enacting reforms. These provisions impedes the independence of the Commission to a large extent little wonder then that in the 33 years of its existence not much can be attributed to it as achievements.
The autonomy and independence of the commission is as expressed in Section 5 sub (7) and is limited to the day to day operations of the commission.

**Issues and Limitations**

**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 overheads 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.

**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 presently in the employment of the Commission. Over the years a high turnover of staff had been recorded while government placed an embargo on recruitment for some years now.

**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. 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.

---

37. Section 5(6) NLRA.
Conclusion and Recommendations

The importance of law reform agencies as a machinery of law reform in any polity cannot be overemphasized. Law reform agencies are the most vigorous among the sources of law reform. Law reform agencies where independent have kept the law of their respective governments in review. Where law reform agencies are not seen to be independent it hampers to a large extent the usefulness of such agencies.

The government should support and co-operate with Law Reform Agencies, while ensuring their independence from government and others, especially their independence in writing their reports and recommendations.

Governments and Law Reform Agencies should ensure that Law Reform Agencies have law reform projects which are of real importance, practicable and time bound. Law reform projects should not be couched in ways that will clog its implementation especially with endless approvals.

Law Reform Agencies should employ especially at this time of technological advancement best modern practice for law reform as exemplified in high quality legal scholarship (including international and comparative perspectives), a deep commitment to community consultation and, where appropriate, empirical and multidisciplinary work.

The above recommendations will be of no moment where commissions are underfunded therefore Governments ought to ensure that their Law Reform Agencies are provided with satisfactory resources, such as personnel (with high-quality Commissioners and legal, research and other staff), funding and modern technology, accommodation and library facilities. Conscientious and prompt consideration must be given to enacting and implementing the recommendations of Law Reform Agencies, this does not necessarily mean that all recommendation of reform agencies should be accepted by the government.