

# The Statutory Role of the Nigerian Law Reform Commission in the Administration of Justice in Nigeria

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## Abstract

Law reforms within the legal system or in the administration of justice system is to improve the laws by making changes or corrections so that the laws will be in harmony with the constant demands of the time being and desired democratic norms. These goals can always be achieved by the way of systematic law reforms based on informed political, economic and social needs which reflects the moral values and aspirations of the people living in a global village. When the old law is reformed and then enacted into new one, it has become a social reality. This new law can be said to emanate from the people. Some said that new law reflects the spirit of the people (i.e. *volkgeist*). For smooth delivery of justice in the administration of justice system in Nigeria, the Nigerian Law Reform Commission has a great role to play and 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 to it by the government from time to time or on its own initiatives to submit proposals for law reforms to the Attorney General and Minister of Justice for the onward submission to the National Assembly (i.e. Parliament) as executive bills for legislation. The Nigerian Law Reform Commission is poorly funded and under utilized to give its professional input in bills making by the Local Government Councils, state houses of Assembly and the National Assembly (i.e. Parliament). The number of the serving commissioners in the Nigerian Law Reform Commission is limited to four. As a commission of jurists this number should be increased by reforming the Nigerian Law Reform Commission Act 1979 to reflect a reasonable number of jurists to cover different branches of law, Sharia and other social sciences.

## Introduction

No society is static. The needs for new laws develops rapidly over the years with the development and evolution of man, society, environment, economy and political circumstances, national and global as well as in religious and moral values.

The law reform mechanism is highly needed in the era of the recent technological advancement. Technology is a key to development and progress. The law is a living thing in the society. It develops and matures with the development of the society. Globalization is another basic factor for the need for new laws and law reforms in national, regional and international levels. This is because the world now is a global village.

The Nigerian Law Reform Commission can not keep itself immune from these global changes, influences of what is happening in the world. The need for law reforms to cope with the new tricky situations in the world and the demand for new laws to cope with the new era is of paramount importance to parliaments and law reform institutions all over the world.

The Nigerian Law Reform Commission was established in 1979 as a respond to the above mentioned needs. But the commission was not fully utilized and it was poorly funded by the Nigerian successive governments. In addition to that the Nigerian Law Reform Commission was established as a parastatal under the Federal Ministry of Justice and not as an independent commission.

This article aims at highlighting the role of the Nigerian Law Reform Commission and its statutory functions as one of the components of the agencies of the administration of justice system in Nigeria. Also some of the sections of the Nigerian Law Reform Commission Act will be ex-rayed and suggestions towards law reform will be proffered.

## The Statutory Role of the Nigerian Law Reform Commission in the Administration of Justice in Nigeria

The Nigerian Law Reform Commission is the institution responsible for harmonizing national legislation. The Federal Ministry of Justice has the following parastatals:

1. The Nigerian Law Reform Commission
2. The Nigerian Legal Aid Council
3. The Nigerian Institute of Advanced Legal Studies.
4. The Nigerian Law School
5. The National Human Rights Commission

These parastatals are all important in the administration of justice system in Nigeria. The Nigerian Law

Reform Commission was established by the Nigerian Law Reform Commission Act 1979.<sup>1</sup> The members of the commission shall be appointed by the President and shall consist of four (4) full-time Commissioners, one of whom shall be designated as the chairman.<sup>2</sup> A person appointed as a commissioner shall hold office for five (5) years and shall be eligible for reappointment for one further period of five (5) years.<sup>3</sup> The persons appointed to be full-time commissioners under section 2(2) of the Nigerian Law Reform Commission Act shall appear before the National Assembly (i.e. parliament) and be suitably qualified-

- (a) By holding of a high judicial office;
- (b) By experience as a legal practitioner of not less than twelve (12) years standing; or
- (c) By being an eminent scholar in law.

Here we may observe that serving senior judicial officers are eligible to be appointed as full-time commissioners in the Nigerian Law Reform Commission. But in case of Legal Practitioners to be appointed as full-time commissioners in the Nigerian Law Reform Commission, we observed that the required number of years at the Bar are increased to twelve years more than the constitutional requirements provided for the appointment of the Attorney-General of the Federation or a state which is ten (10) years at the Bar qualified to practice as a legal practitioner in Nigeria.<sup>4</sup> This may be prompted by the position that to be a commissioner in the Nigerian Law Reform Commission, it requires more years of experience in practice and research. Also by way of contrast we find section 238(3) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) provides:

“A person shall not be qualified to hold the office of a justice of the Court of Appeal unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than twelve (12) years”.

This means that commissioners in the Nigerian Law Reform Commission have been put in the same position of justices of the Court of Appeal. In real practice this position of the constitution has been maintained and commissioners of the Nigerian Law Reform Commission have been given same salary and allowances as justices of the Court of Appeal. But the chairman of the Nigerian Law Reform Commission has been given the same status in salary and allowances of a justice of a Supreme Court.<sup>5</sup>

We also observed that section 2(1) of the Nigerian Law Reform Commission Act which has limited the power of the President to appoint only four (4) commissioners, needs an urgent amendment so that a reasonable number of jurists should be appointed in the commission in order that the commission can shoulder its enormous responsibilities creditably well.<sup>6</sup> Even though we know that the Nigerian Law Reform Commission is not the only source of making proposals for law reform. It is true that the Nigerian Law Reform Commission has made many recommendations for the reform of specific laws but most have not been acted upon by the executive. This means that since the Nigerian Law Reform Commission is not the only source of making proposals for law reform, then it has to compete with others for space on the government’s legislative calendar. It is also possible that the Nigerian Law Reform Commission’s priorities may not be parallel to those of the executive, which may favour only legislation focused on the delivery of immediate social and economic benefits. This might be a genuine reason that the Nigerian Law Reform Commission’s proposals have not seen the light by the executive. It is important here to say that the Nigerian Law Reform Commission has to be on the same page with the executive in putting their priorities together for effective machinery of law reforms in Nigeria. The Nigerian Law Reform Commission should develop an advocacy strategy aimed at increasing the prospects of its recommendations being adopted by the Federal Executive Council and passed into legislation by the National Assembly (i.e. Parliament).<sup>7</sup>

We further observed that section 2(2)(c) of the Nigerian Law Reform Commission Act which stated that one of the commissioners must be qualified for appointment by Mr. President should be suitably qualified “by being an eminent scholar in law” needs urgent attention for amendment. This is because in Nigeria we do have a legal system which consists of Common Law, Sharia and Customary Law. To adhere to one (i.e. Common Law)

<sup>1</sup> See Section 1(1) of the Nigerian Law Reform Commission Act 1979 Cap. N118 Laws of the Federation of Nigeria. Volume 11 updated to the 31<sup>st</sup> Day of December, 2010.

<sup>2</sup> Section 2(1) Ibid.

<sup>3</sup> Section 2(4) Ibid.

<sup>4</sup> See Section 150(2) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) provides: “A person shall not be qualified to hold or perform the functions of the office of the Attorney-General of the Federation unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for not less than ten years”; also section 195(2) of the constitution provide: “A person shall not be qualified to hold or perform the functions of the office of the Attorney-General of a state unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for not less than ten years”.

<sup>5</sup> Section 2(6) of the Nigerian Law Reform Commission Act Supra.

<sup>6</sup> Section 2(1) of the Nigerian Law Reform Commission Act provides: “The members of the commission shall be appointed by the president and shall consist of four full-time commissioners, one of whom shall be designated as the chairman”.

<sup>7</sup> See the Report of the Presidential Commission on Reform of the Administration of justice in Nigeria October, 2006 at p. 40.

and ignore the two is not fair. Since we have equated commissioners of the Nigerian Law Reform Commission in the same status with the justices of the Court of Appeal, it is fair if we look at the constitutional composition of the Court of Appeal. Section 237(1)(2) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) provides as follows:

- (1) There shall be a Court of Appeal.
- (2) The Court of Appeal shall consist of
  - (a) a President of the Court of Appeal; and
  - (b) such number of justices of the Court of Appeal, not less than forty-nine of which not less than three shall be learned in Islamic personal law, and not less than three shall be learned in Customary Law, as may be prescribed by an Act of the National Assembly.

Here we observed that section 237(2)(B) has taken into consideration the special characteristics of the Nigerian Legal system by recognizing the position of the Islamic Law and how deep rooted in the Nigerian legal system and another recognition of the customary law. We believe that section 2(2)(c) of the Nigerian Law Reform Commission Act can follow the trend of section 237 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and by way of reform to section 2(2)(c) the words “Islamic Personal Law” and “Customary Law” should be added to the said section to read “by being eminent scholars in law, Islamic Personal Law and Customary Law”. This reform can also take into consideration our earlier suggestion that the number of the Nigerian Law Reform Commission should be increased to a reasonable number of jurists to make the process of Law reforms in Nigeria more effective, more creditable and generally acceptable by the majority of the Nigerian people.

The Nigerian Law Reform Commission is mandated 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.<sup>1</sup>

To discharge its statutory obligations, the Nigerian Law Reform Commission shall receive and consider any proposals for the reform of the law which may be made or referred to it by the Attorney-General of the Federation.<sup>2</sup> It may also prepare on its own initiative and submit to the Attorney-General from time to time, programmes for the examination of different branches of the law with a view to reform.<sup>3</sup> It shall prepare, from time to time, at the request of the Attorney-General, comprehensive programmes of consolidation and statute law revision, and undertake the preparation of draft legislation pursuant to any such programme approved by the Attorney-General.<sup>4</sup> The Commission may also provide advice and information to the Federal Government departments and other authorities or bodies concerned, at the instance of the Federal Government, with proposals for the reform or amendment of any branch of the law.<sup>5</sup>

The Attorney-General of the Federation in his capacity as the law officer of the Federation and the supervisor of the Commission may modify the terms of a reference and also give directions to the Commission as to the order in which it is to deal with references and assignments given to it by his office.<sup>6</sup> For the purpose of the efficient performance of its functions under the Nigerian Law Reform Commission Act, the Commission may, from time to time, obtain such information as to the legal system of other countries as appears to it likely to facilitate the performance of such function.<sup>7</sup> 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.<sup>8</sup> The Attorney-General shall lay before the President any programmes prepared by the Commission and any Proposals for reform formulated by the Commission pursuant to such programmes.<sup>9</sup> The Commission is an autonomous body in its day to day operations.<sup>10</sup> The Commission shall have power also to consider proposals for reform of state laws from any state, group of states or all the states in the Federation and submit reports thereon to the appropriate Attorney-General or Attorneys-General.<sup>11</sup> The Commission on its own initiative or upon request from any state or states, consider or put forward proposals for the consideration of the

<sup>1</sup> Section 5(1) of the Nigerian Law Reform Commission Act Supra.

<sup>2</sup> Section 5 (2) (a) Ibid.

<sup>3</sup> Section 5 (2) (b) Ibid.

<sup>4</sup> Section 5 (2) (d) Ibid.

<sup>5</sup> Section 5 (2) (e) Ibid.

<sup>6</sup> Section 5 (3) (a) (b) Ibid.

<sup>7</sup> Section 5 (4) Ibid.

<sup>8</sup> Section 5 (5) Ibid.

<sup>9</sup> Section 5 (6) Ibid.

<sup>10</sup> Section 5 (7) Ibid.

<sup>11</sup> Section 7 (1) Ibid.

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.<sup>1</sup> In such situation of request by state or states the financial burden shall be borne by the Government of the state concerned or as the case may be, the Governments of the States concerned.<sup>2</sup>

According to section 8 (1) of the Nigerian Law Reform Commission Act, there shall be appointed for the Commission by the President, on the recommendation of the Attorney-General, a Secretary who shall –

- (a) be the accounting officer of the Commission;
- (b) hold office –
  - (i) for a period of five years in the first instance and may be re-appointed for one further period of five years and no more; and
  - (ii) on such terms and conditions as may be specified in his letter of appointment;
- (c) 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; and
- (d) carry out such other duties as may be directed, from time to time by the Commission.

The Commission may appoint such number of other persons to be employees of the Commission as it may deem fit.<sup>3</sup> The Nigerian Law Reform Commission has made many recommendations for the reform of specific laws to mention but a few like the Unification of the Penal Code and Criminal Code Bill, Victims of Crime Remedies Bill, Prevention and Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment And Other Related Matters Bill, the Nigerian Community Service Bill...etc; but most have not been acted upon by the executive.<sup>4</sup>

The Nigerian Law Reform Commission shall prepare and submit to the President of the Federal Republic of Nigeria, through the Attorney-General and minister of justice, not later than 30 June in each financial year, a report on the activities of the commission during the immediately preceding financial year, and shall include in such report a copy of the audited accounts of the commission for that year and the auditor's report there on.<sup>5</sup>

Here we observed that eventhough the Nigerian Law Reform Commission is poorly funded but it has to account for its spending by submitting an audited annual report covering its activities to the President through the Attorney-General and Minister of Justice.

The Nigerian Law Reform Commission may, from time to time, published general reports on its activities for sale to members of the public.<sup>6</sup>

We also observed that under section 5(2)(a) of the Nigerian Law Reform Commission Act, the words “the Attorney-General of the Federation” is mentioned without making reference to the words “and a Minister of the Government of the Federation”. It is only indicated that the Attorney-General of the Federation in this Act referred to as “the Attorney-General”. Also we find section 8(1), 11(1) and 12(1) of the Nigerian Law Reform Commission Act made mention of the words “Attorney-General” with reference to the Attorney-General of the Federation without the words “and a Minister of the Government of the Federation”.

This trend is also followed by section 7(1)(2)(4) of the Nigerian Law Reform Commission Act by mentioning the words “Attorney-General of a state” or “Attorneys-General of states” all without mentioning the words “and Commissioner for justice of the Government of that state”.

This trend adopted in the Nigerian Law Reform Commission Act indicates as if in Nigeria we have two offices, one is independently meant for the Attorney-General of the Federation and an other independent one for the Minister of justice. Which is not the case in Nigeria. The Attorney-General of the Federation is the same minister of justice. Likewise the Attorney General of a state is the same commissioner for justice in a state.

The office of the Attorney-General and Minister of Justice is expressly created by the 1999 Constitution of the Federal Republic of Nigeria (As Amended). Section 150(1) of the Constitution provides:

“There shall be an Attorney-General of the Federation who shall be the chief Law Officer of the Federation and a Minister of the Government of the Federation”<sup>7</sup>

Section 195(1) of the Constitution provides:

“There shall be an Attorney-General for each state who shall be the chief Law Officer of the state and Commissioner for Justice of the Government of that

<sup>1</sup> Section 7 (2) Ibid.

<sup>2</sup> Section 7 (3) Ibid.

<sup>3</sup> Section 8 (2) Ibid.

<sup>4</sup> See the Report of the Presidential Commission on Reform of the Administration of Justice in Nigeria Supra.

<sup>5</sup> Section 12(1) of the Nigerian Law Reform Commission Act Supra.

<sup>6</sup> Section 12(2) Ibid.

<sup>7</sup> Section 150(1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).

state”.<sup>1</sup>

The above mentioned constitutional provisions show us clearly that the Nigerian Law Reform Commission Act has failed to qualify sections 5(2)(a), 8(1), 11(1) and 12(1) by not adding the words “and a Minister of the Government of the Federation” to these sections which have made mention of the Attorney-General of the Federation only. Likewise in section 7(1)(2)(4) of the Nigerian Law Reform Commission Act which has also failed not to add the words “and Commissioner for justice of the Government of that state” to the words “Attorney-General” of a state or “Attorneys-General” of states mentioned in the said Act.

The two constitutional provisions (i.e. section 150(1) and section 195(1)) clearly show us that in Nigeria, the office of the Attorney-General of the Federation and a minister of justice is one and the Attorney-General of a state and Commissioner for justice of the Government of that state is also one office.

### **Conclusion and Suggestions towards Law Reform**

The Nigerian justice sector is still challenged to heal the systemic effects of many years of military rule. The justice sector was not considered as priority by successive military and civilian governments. The consequence of this has been the glaring neglect of key justice institutions like the Nigerian Law Reform Commission. We risk to conclude with the following recommendations:

1. Section 2(1) of the Nigerian Law Reform Commission Act needs urgent reform to increase the number of the serving commissioners from four to a reasonable acceptable number.
2. Section 2(2)(c) of the Nigerian Law Reform Commission Act which provides “by being an eminent scholars in law” needs also an urgent reform to cover Law, Sharia, Customary Law and other social sciences.
3. Sections 5(2)(a), 8(1), 11(1), 12(1) of the Nigerian Law Reform Commission Act needs an urgent attention to qualify where an Attorney-General of the Federation is mentioned it has to be followed by “and a Minister of the Government of the Federation”. Likewise section 7(1)(2)(4) of the Nigerian Law Reform Commission Act needs the same attention where an Attorney-General of a state or Attorneys-General of states is mentioned, it has to be followed by the words “and Commissioner for Justice of the Government of that state”.
4. In drafting new bills for law reforms in Nigeria the provisions of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) have to be put into consideration to make the new Law more credible and valid. This is the supremacy of the constitution.

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<sup>1</sup> Section 195(1) Ibid.